RECORD, CASE No. 14,152.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~780~~ 731 183

THE KEOKUK AND WESTERN RAILROAD COMPANY, APPELLANT,

vs.

THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 17, 1890.

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a UNITED STATES OF AMERICA,
Northern Division of the Eastern Judicial District of Missouri, } ss:

I, George C. Moore, clerk of the circuit court of the United States in and for the northern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a full, true, and complete transcript of all the record and proceedings had, together with the proofs and testimony, in case No. 19, of The Keokuk and Western Railway Company, complainant, against The County Court of Scotland County, Missouri, *et al.*, defendants, as fully as the same remain on file and of record in said case in my office.

Seal of the United States Circuit Court, Northern Division of the Eastern Judicial District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Hannibal, in the northern division of said district, this 30th day of August, in the year of our Lord eighteen hundred and ninety.

GEO. C. MOORE,
Clerk of said Court.

1 UNITED STATES OF AMERICA,
Northern Division of the Eastern Judicial District of Missouri, } ss:

In the Circuit Court of the United States in and for the Northern Division of said District.

Be it remembered that on the thirteenth day of February, A. D. 1888, the following, among other, proceedings were had and appear of record in said court, to wit:

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; ROBERT M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing; The County Court of Clark County, Missouri; J. E. Todd, Mike Seyb, George Harter, and J. H. Million; The County Court of Schuyler County, Missouri; William Logan, N. Sloop, T. G. Neely, N. T. Roberts, Defendants. } 19.

At this day comes the complainant, by its attorney, F. T. Hughes, Esq., and files its bill of complaint against said defendants,
2 and at the same time files the following restraining order:

In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri.

KEOKUK & WESTERN RAILROAD COMPANY
vs.
THE COUNTY COURT OF SCOTLAND COUNTY and Others.

On presentation to me of the annexed and foregoing bill of com-

plaint, duly verified by the oath of F. T. Hughes, Esq., and upon due consideration thereof, it is—

Ordered that the defendants herein show cause before me, at chambers, in the city of St. Louis, Missouri, on Tuesday, the twenty-first day of February, A. D. 1888, at two o'clock p. m., or as soon thereafter as counsel can be heard, why the temporary injunction prayed for in said bill of complaint should not be granted, and that in the meantime and until such hearing can be had that the several defendants herein, to wit, The County Court of Scotland County, Missouri; Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing; The County Court of Clark County, Missouri; J. E. Todd, Mike Seyb, George Harter, and J. H. Million; The County Court of Schuyler County, Missouri; William Logan, N. Sloop, T. G. Neeley, and N. T. Roberts, their clerks, agents, servants, and attorneys, be enjoined and restrained from attempting to collect, either by distress, seizure, or sale of the complainant's property or by the institution or prosecution of any suits, any of the taxes, interests, penalties, or costs referred to and particularly described in the bill of complaint herein referred to and annexed.

AMOS M. THAYER,
U. S. District Judge, Eastern District of Missouri.

3 Which said bill of complaint is in words and figures as follows to wit:

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, —— Term, 1888, at Chambers, ss:

THE KEOKUK & WESTERN R. R. CO., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; ROBERT M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing; The County Court of Clark County, Missouri; J. E. Todd, Mike Seyb, George Harter, and J. H. Million; The County Court of Schuyler County, Missouri; William Logan, N. Sloop, T. J. Neeley, and N. T. Roberts, Defendants.

To the judges of the circuit court of the United States for the northern division of the eastern district of Missouri:

The Keokuk & Western Railroad Company, a corporation organized and existing under the laws of the State of Iowa and a citizen of said State, brings this bill against Robert M. Thompson, Joseph E. Billups, W. W. Buford, Joel Ewing, J. E. Todd, Mike Seyb, George Harter, J. H. Million, William Logan, N. Sloop, T. G. Neeley, N. T. Roberts, all residents and each a citizen of the State of Missouri; and thereupon your orator complains and says that the amount in controversy in this suit exceeds, exclusive of interest and costs, the sum of $2,000.00.

Your orator further states that by an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved Feb. 9th, 1857,

the Alexandria and Bloomfield Railroad Company became and was duly incorporated, possessed of all the powers, privileges, rights, immunities, exemptions, franchises, and properties, and subject to all the liabilities, obligations, and restrictions mentioned in said act; that on or about the 13th day of September, A. D. 1864, said company was duly organized and directors elected, as required by section 4 of said act, and immediately said company com-
4 menced and proceeded to carry out its proper business and railroad operations under the privileges and conditions in said act mentioned; that by an act of the said General Assembly entitled "An act to amend an act entitled 'An act to incorporate the Alexandria & Bloomfield Railroad Company,'" approved Feb. 9th, 1857, which amendatory act was approved Feb. 9th, 1866, and by the due acceptance of the 1st section of said amendatory act the corporate name of said railroad company was changed to that of the Alexandria & Nebraska City railroad.

That, in pursuance of the general laws of the States of Missouri and Iowa authorizing consolidation of railroad companies owning a connected railroad line in said States, the said Alexandria and Nebraska City Railroad Company, on the 3rd day of May, 1870, duly and legally consolidated with the Iowa Southern Railroad Company, a railway company duly incorporated, organized, and existing under the laws of the State of Iowa, and that thereafter the said Alexandria and Nebraska City Railroad Company and the said Iowa Southern Railway Company became merged and consolidated into and formed one company under the corporate name of the Missouri, Iowa & Nebraska Railway Company.

Your orator further says that the said Missouri, Iowa & Nebraska Railway Company by such consolidation succeeded to and became vested with all the rights, franchises, privileges, and immunities, property, and exemptions belonging to or in any way appertaining to the said Alexandria & Bloomfield Railroad Company; and that section 9 of the charter of the Alexandria & Bloomfield Railroad Company is as follows: "The stock of said company shall be exempt from taxation for the period of twenty years after its completion." Said railway was completed to the State line between the said States of Missouri and Iowa about the 31st day of December, 1872, by reason of which the railway property of the said Missouri,
5 Iowa & Nebraska Railway Company was not nor could it become liable for any taxes whatever upon its railway property until said twenty years had elapsed from the said 31st day of December, 1872.

Your orator further states that, notwithstanding the exemption from taxation aforesaid, the said county court of Scotland county, in the year 1872, proceeded to and did levy and attempt to collect State, county, and municipal taxes upon the railway property aforesaid, and, having levied the same, did, on or about the April term, 1873, cause suit to be instituted in the circuit court of said Scotland county, Missouri, against the said Missouri, Iowa & Nebraska Railway Company, as defendant, to recover the said State, county, and municipal taxes then alleged to be due and payable for the year

1872 on said railway property in said county, the title of said suit being The Scotland County against the said Missouri, Iowa & Nebraska Railway Company; that to said suit the said Missouri, Iowa & Nebraska Railway Company appeared and made answer, alleging, among other things, that the said railway company was not liable to pay said taxes nor any part thereof by reason of the exemption contained in said section 9 of the said Alexandria & Bloomfield railroad charter, and thereafter such proceedings were had in said cause in said court that said court sustained the said answer and rendered final judgment in favor of the said railroad company, the said circuit court holding and deciding that the said section 9 of the said Alexandria and Bloomfield charter did exempt the property of the said Missouri, Iowa & Nebraska Railway Company, described in the petition herein, from all taxation, whether State, county, municipal, or otherwise, for the period of twenty years after the completion of said railway; that thereafter such further proceedings were had in said cause that on the appeal to the supreme court of Missouri the judgment of the said Scotland county circuit court was in all things affirmed. The report of said cause containing an agreed statement of the facts upon which the said cause was tried will be found in the 65th vol-
6 ume, beginning at page 123, of the Missouri Supreme Court Reports, the record of which cause your orator is ready and willing to produce when and where this honorable court shall direct.

That thereafter, in the year 1881, James Secor and other stockholders of the Missouri, Iowa & Nebraska Railway Company filed a bill in the circuit court of the United States for the eastern district of Missouri praying an injunction against the said Missouri, Iowa & Nebraska Railway Company from paying certain taxes alleged to be due from the said railway property in the said Scotland county and also the said Clark and Schuyler counties, in said State, and also to enjoin the county court, the judges thereof, and collectors of revenue of said counties from collecting any taxes levied upon said railway property in said counties of Clark, Scotland, and Schuyler for the year 1881 or any previous years; that thereafter such proceedings were had in such court in said cause that the said circuit court held and determined that the said charter of the said Alexandria & Bloomfield Railroad Company did exempt the property of the said Missouri, Iowa & Nebraska Railway Company from taxes for the period of twenty years after completion as aforesaid, the report of which is found in the 9th vol. of the Federal Reporter, beginning at page 809.

Your orator avers and charges that the matters and things set forth in the said cause in the said circuit court of Scotland county and the said circuit court of the United States adjudicated and determined, upon the facts stated in said causes, that the said Missouri, Iowa & Nebraska Railway Company was not nor could it be made liable to pay the taxes upon its property for the period of 20 years after completion and the same became and were *res adjudicata*.

Your orator further states, notwithstanding the said judgment

and decree of the courts aforesaid, the said county courts of the said Scotland, Schuyler, and Clark counties, wrongfully contriving to injure the said Missouri, Iowa & Nebraska Railway Company,
7 proceeded to and pretended to levy other State, county, and municipal taxes upon the said railway property lying and being in the respective counties in the years following, and especially in the years 1883, 1884, 1885, 1886, 1887, and had the same extended upon the tax books of said counties in the respective years, the said county courts delivering the same to the collector thereof with directions to collect the same in the manner provided by law for collection of taxes in the said State of Missouri where taxes are legally levied and due upon railroad property in said State; that such collector will either sue your orator or seize its property by virtue of said illegal tax levies to compel it to pay such illegal taxes; that, as your orator is informed and believes, and so states the facts, the amount of taxes so levied in the county of Scotland exceeds the sum of $3,000.00, exclusive of penalties, interests, and costs claimed to be due, and that like amounts are also claimed to be due upon the said levies in each of the other counties of Schuyler and Clark.

Your orator further states that some time in the year 1870 said Missouri, Iowa & Nebraska Railway Company mortgaged its entire railway property and franchises to the Farmers' Loan & Trust Company, a corporation, as trustee, to secure certain bonds in said mortgage or deed of trust described and the interest thereon; that thereafter, in the year 1879, the said railway company having made default in payment of said interest due upon the said bonds, foreclosure proceedings were begun in the circuit court of the United States for the district of Iowa, at the city of Des Moines, in said State, and that such proceedings were had in said cause in said court that on the 22nd day of October, 1880, a decree of foreclosure was entered therein, which decree remained unexecuted, and thereafter a supplemental decree of foreclosure was had in said cause on or about the 8th of July, 1886, the said supplemental decree being entered in the said United States circuit court for the southern district of Iowa, eastern division, at Keokuk, to which said
8 cause had by law been transferred in the meantime because of a division of the said district of Iowa and establishment of the said circuit court for the eastern district at Keokuk as aforesaid; that thereafter, on the 19th day of August, 1886, in pursuance of said decree, all the said railway property and franchises of the said Missouri, Iowa & Nebraska Railway Company were sold in the said city of Keokuk to Morris K. Jessup and Henry C. Thacher by P. T. Lomax, Esq., master in chancery in said court and special commissioner to make said sale; that the said sale on or about the 21st day of September, 1886, was duly confirmed by said United States circuit court, and that thereafter, the said Jesup and Thacher having paid the purchase price as bid, the said property, premises, and franchises of the said railway company aforesaid *was* by said Lomax, as such master, duly conveyed to said Jesup and Thacher, which said conveyance included all the railway property, premises, and franchises heretofore described in the said States of Missouri and

Iowa; that thereafter, for a good and valuable consideration, the said Jesup and Thacher conveyed the premises, property, and franchises aforesaid to your orator, the said Keokuk and Western Railroad Company, and thereafter, on or about the 3rd day of December, 1886, in pursuance of the said purchase and decree of court, the said circuit court, your orator having paid the purchase price agreed to be paid the said Jesup and Thacher by order of the said United States circuit court on said last-mentioned date, delivered possession of the said railway property and franchise to your orator, since which time it has been and still is the owner, in possession of, and operating the said railway property, as under the laws of the said States of Iowa and Missouri it has authority so to do.

Your orator further avers that it became the owner of the said property and franchises by virtue of the said charter of the said Alexandria & Bloomfield Railroad Company and the said Missouri,
Iowa & Nebraska Railway Company and of the said purchase,
9 decree, and sale of the said courts, free from all taxes or liens
thereon in the said State of Missouri, and especially the taxes attempted to be levied and collected as hereinbefore stated.

Your orator further states that notwithstanding it did not, on the 1st day of Jan., 1886, or at any time in said year prior to the said third day of December, 1886, own or operate said railway or any part thereof, yet the said county courts of the said counties of Scotland, Clark, and Schuyler cause taxes on the property aforesaid to be levied in the respective counties aforesaid against your orator as owner of said property and had the same extended on the respective tax books in said county, delivered the same to the collector thereof, with directions and orders to collect the same in the manner provided by law where taxes are legally assessed and collected; that the said collectors are in possession of the tax books for said counties with the taxes extended therein as aforesaid and are demanding, threatening, and attempting to enforce the collection of said taxes in all of the years aforesaid, and are threatening to seize and sell the property of your orator in said counties and State for the purpose of satisfying alleged to-be-due taxes, and are threatening and proposing, under the forms of the laws of said State, to institute suits against your orator in the courts of competent jurisdiction in said counties and prosecute the same with a view of enforcing the said illegal and unjust taxes so pretended to be levied, and are in every way threatening a multiplicity of suits for the enforcement of said collections as it may seem to said county courts and collectors thereof as proper, and that your orator will be compelled to pay, submit to said suits, levies, seizures, and other proceedings unless the said parties defendants herein are enjoined and restrained by this honorable court from so doing.

Your orator avers that it believes and so charges the fact to be that no taxes whatever are due upon any of the said properties in
the said State of Missouri, and that the defendants had no
10 right to enforce or attempt to — the collection of any part
thereof as claimed and alleged to be due.

That defendants Robert M. Thompson, Joseph E. Billups, and W.

W. Buford are the only duly elected and qualified, and acting as such, judges of the county court of said Scotland county, and that the defendants Joel Ewing is collector of revenue of said Scotland county; that defendants William Logan, N. Sloop, T. G. Neely are duly elected and qualified judges of the county court of said Schuyler county, and defendant N. T. Roberts is collector of revenue thereof; that defendants J. E. Todd, Mike Seyb, and George Harter are duly elected and qualified judges of the county court of said Clark county, and that the defendants J. H. Million is collector of revenue of said Clark county.

Therefore, in consideration of the premises aforesaid, may it please your honors to grant unto your orator the *right* of injunction issuing out of and under the seal of this honorable court or issued by one of your honors, according to the form — the statutes in such cases made and provided, perpetually enjoining and restraining the said defendants and each and every of them, their clerks and attorneys, from directly or indirectly collecting or attempting to collect, either by distress, seizure, and sale of your orator's property, by institution and prosecution of suits in any of the courts of the said State of Missouri, or by any other means whatever, any of the taxes, interest, penalties, and costs alleged and claimed to be due herein upon any of the property of your orator in said State of Missouri for the year and years aforesaid, and for such other orders — proceedings in this cause as to your honors may seem meet; and may it please your honors to grant to your orator a provisional or preliminary injunction issuing out of and under the seal of this honorable court, enjoining the defendants and each of them, their clerks and attorneys, to the same purport, tenor, and effect herein prayed for in regard to said perpetual injunction.

11 And your orator further avers that it has good reason to believe and does believe that if notice of the application for this provisional and preliminary injunction is given to the said defendants or any of them they will, before the day for the hearing of said preliminary injunction on said notice, institute suits against your orator in the various counties in said State, in the courts of said State, and thereby deprive this honorable court of jurisdiction in the premises; wherefore—

Your orator prays that a restraining order issue at once out of and under the seal of this honorable court against the said defendants and each of them, restraining them to the same purport, tenor, and effect hereinbefore prayed for in regard to said perpetual injunction until such time as your orator can give notice when and where your orator will apply for the provisional and *provisionary* injunction hereinbefore prayed.

And may it please your honors to grant unto your orator a writ of subpœna *out* of the United States of America, issued out of and under the seal of this honorable court, directing the said Robert M. Thompson, Joseph E. Billups, W. W. Buford, Joel Ewing, J. E. Todd, Mike Seyb, George Harter, J. H. Million, William Logan, N. Sloop, T. G. Neeley, N. T. Roberts, as defendants, commanding them and each of them, on a day certain therein to be named and under

a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against them and each of them; and your orator, as in duty bound, will ever pray.

F. T. HUGHES,
Solicitor for Complainant & of Counsel.

UNITED STATES OF AMERICA, } ss:
— *Division.* — *District of Missouri,* }

F. T. Hughes, being duly sworn, deposeth and sayeth that he is president of The Keokuk & Western Railroad Company, complainant in the foregoing bill named; that he has read the
12 same and knows the contents thereof; that the said bill is true of his own knowledge except as to those matters which are therein stated to be on his own information and belief, and as — these matters he believes them to be true.

F. T. HUGHES.

Sworn to before me this 11th day of February, 1888.
[L. S.] T. L. CRAWFORD,
Commissioner United States Circuit Court,
Eastern Division, Eastern Judicial District of Mo.

(Endorsed:) No. 19. In the circuit court U. S., northern div., east. dist. Mo., — term, 1888, chambers. The Keokuk & Western R. R. Co, complainant, *vs.* Scotland Co., Mo., and others, defendants. Bill of complaint. Filed Feb. 13, 1888. Geo. C. Moore, clerk.

And afterwards, to wit, on the said 13th day of February, 1888, there was issued out of the office of the clerk of the said United States circuit court for said northern division of said eastern district of Missouri a duly certified copy of the said foregoing restraining order to each of the said several defendants and the same delivered to the United States marshal for said district.

And afterwards, to wit, on the 14th day of February, 1888, there was issued out of the office of the clerk of the circuit court aforesaid and under the seal thereof a writ of subpœna in chancery directed to the said defendants and delivered to the United States marshal for said eastern district of Missouri, and which said writ of subpœna is in words and figures as follows, to wit:

13 UNITED STATES OF AMERICA, *Northern Division of the Eastern Judicial District of Missouri*, } *sct:*

In the Circuit Court of the United States in and for the Northern Division of said District.

The President of the United States of America to Robert M. Thompson, Joseph E. Billups, W. W. Buford, Joel Ewing, J. E. Todd, Mike Seyb, George Harter, J. H. Million, William Logan, N. Sloop, T. G. Neeley, and N. T. Roberts, defendants, Greeting:

You are hereby commanded to be and appear at rules to be held at the office of the clerk of the circuit court of the United States in and for the northern division of the eastern judicial district of Missouri on the first Monday of April next, at the city of Hannibal, then and there to answer the bill of complaint of The Keokuk & Western Railroad Company, complainant, citizens of the State of Iowa, filed against you on the 13th day of February, 1888. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 14th day of February, 1888.

[L. S.] Issued at office, in the city of Hannibal, under the seal of said circuit court, the day and year last aforesaid.

GEO. C. MOORE, *Clerk*,
By —— ——, *Deputy*.

MEM.—The defendants to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*.

GEO. C. MOORE, *Clerk*,
By —— ——, *Deputy*.

(Endorsed:) No. 19. United States circuit court, northern division of the eastern judicial district of Missouri. The Keokuk & Western R. R. Co. *vs.* Scotland Co., Mo., *et al.* Subpœna in chancery. Issued 14th day of Feb'y, A. D. 1888. Returnable on first Monday, the 2nd day, of April, 1888.

14 Returned to the clerk's office and filed this 10th day of April, A. D. 1888.

GEO. C. MOORE, *Clerk*.

Afterwards, to wit, on the 15th day of March, 1888, the following proceedings were had and appear of record in said cause, to wit:

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, Mo., *et al.*, Defendants. } 19.

At this day is received and filed in this cause the following papers, to wit:

"Duly certified copy of original restraining order and return of marshal thereon," "order of court made at chambers February 21st, 1888," and "order of court made at chambers March 14th 1888," to wit:

In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri.

AT CHAMBERS,
TUESDAY, *February 21st, A. D.* 1888.

THE KEOKUK & WESTERN RAILROAD CO.
vs.
THE COUNTY OF SCOTLAND and Others.

The order in this case to show cause issued on February 13th, 1888, having been this day returned executed, and the parties, plaintiff and defendants, having appeared before me and requested a postponement of the hearing until March 14th, 1888, it is now ordered that hearing of the application for a preliminary injunction be adjourned until March 14th, 1888, and in the meantime that the restraining order be continued in force.

AMOS M. THAYER, *Judge.*

15 In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri.

AT CHAMBERS, *March 14th*, 1888.

THE KEOKUK & WESTERN R. R. CO.
vs.
THE COUNTY COURT OF SCOTLAND COUNTY and Others.

The parties to this cause having this day appeared, and defendants having requested further time to show cause why a temporary injunction should not be granted, it is now ordered that such request be granted, and that the parties defendant have until the first Monday in May next to show cause against the issuance of a temporary injunction as prayed, and that in the meantime the existing restraining order be in all things continued in force.

AMOS M. THAYER, *Judge.*

Which said certified copy of restraining order and return of marshal thereon *is* in words and figures as follows, to wit:

In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri.

KEOKUK & WESTERN RAILROAD COMPANY
vs.
THE COUNTY COURT OF SCOTLAND COUNTY and Others.

On presentation to me of the annexed and foregoing bill of complaint, duly verified by the oath of F. T. Hughes, Esq., and upon due consideration thereof, it is—

Ordered that the defendants herein show cause before me,
16 at chambers, in the city of St. Louis, Missouri, on Tuesday, the twenty-first day of February, A. D. 1888, at two o'clock p. m., or as soon thereafter as counsel can be heard, why the temporary injunction prayed for in said bill of complaint should not be granted, and that in the meantime and until such hearing can be had that the several defendants herein, to wit, The County Court of Scotland County, Missouri, Robert M. Thompson, Joseph E. Billups, W. W. Bufford, and Joel Ewing, The County Court of Clark County, Missouri, J. E. Todd, Mike Seyb, George Harter, and J. H. Million, The County Court of Schuyler County, Missouri, William Logan, N. Sloop, T. G. Neeley, and N. T. Roberts, their clerks, agents, servants, and attorneys, be enjoined and restrained from attempting, to collect either by distress, seizure, or sale of the complainant's property or by the institution or prosecution of any suits, any of the taxes, interests, penalties, or costs referred to and particularly described in the bill of complaint herein referred to and annexed.

AMOS M. THAYER,
U. S. District Judge, Eastern District of Missouri.

UNITED STATES OF AMERICA,
Northern Division of the Eastern Judicial District of Missouri, } *ss:*

I, George C. Moore, clerk of the circuit court of the United States in and for the northern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true copy of original restraining order made in case No. — of The Keokuk & Western R. R. Co., plaintiff, against The County Court of Scotland County and others, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix
17 the seal of said court, at office, in the city of Hannibal, in the northern division of said district, this thirteenth day of February, in the year of our Lord eighteen hundred and eighty-eight.

[L. S.]

GEO. C. MOORE,
Clerk of said Court,
By —— ——, *Deputy.*

UNITED STATES OF AMERICA,
Northern Division of the Eastern Judicial District of Missouri, } *ss:*

I hereby certify that I have executed this writ by delivering a true copy of the same to Joel Ewing, collector of Scotland county, on the 13th day of Feb., 1888, and Robert M. Thompson on the 15th day of Feb., 1888, and Joseph E. Billups on the 14th day of Feb., 1888, and W. W. Buford on the 15th day of Feb., 1888, county judges of the above county. I further executed this writ by delivering a true copy of the same to N. T. Ro-erts, county collector of Schuyler county, on the 14th day of Feb., 1888, and N. Sloop on

the 14th day of Feb., 1888, and T. G. Neeley on the 14th day of Feb., 1888, and by leaving a true copy of the same with a member of the family over the age of sixteen years at the usual place of abode of William Logan on the 14th day of Feb., 1888. I furthermore executed this writ by delivering a true copy of the same to J. H. Million, collector of Clark county, on the 13th day of Feb., 1888, and by delivering a true copy of the same to J. E. Todd on the 20th day of Feb., 1888, and to Mike Seyb on the 20th day of Feb., 1888, and George Harter on the 20th day of Feb., 1888, judges of the county court of Clark county; all done in the above district.

J. W. EMERSON,
U. S. Marshal,
By W. R. KELLY, *Dep'ty.*

18 Afterwards, to wit, on the 10th day of April, 1888, the following proceedings were had and appear of record in said cause:

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY *et al.*, Defendants.

At this day comes the United States marshal and returns and files the original subpœna in chancery issued herein with his return endorsed thereon.

Which said return is in words and figures, to wit:

UNITED STATES OF AMERICA,
Northern Division of the Eastern Judicial District of Missouri, } *sct:*

I have executed this writ on county of Clark by delivering a copy of same to J. H. Million, collector of said county; also by delivering a copy of this writ to J. E. Todd, Mike Seyb, & Geo. Harter, judges of county court of Clark county. I further executed this writ by delivering a copy of the same to Joel Ewing, collector of Scotland county; also by delivering a copy of this writ to Joseph E. Billups, W. W. Buford, and Robert M. Thompson, judges of the county court of Scotland county, this 2nd day of April, 1888.

I further executed this writ by delivering a copy of the same to N. T. Roberts, county collector of Schuyler county; also by delivering a copy of this writ to William Logan, N. Sloop, and T. G. Neeley, judges of the county court of Schuyler county, Mo.; all done in the above district this 3rd day of April, 1888.

J. W. EMERSON,
U. S. Marshal, Eastern District of Missouri,
By W. R. KELLY, *Deputy.*

19 And afterwards, to wit, on the 4th day of May, 1888, the following proceedings were had and appear of record in said cause, to wit:

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY *et al.*, Defendants.

At this day comes the defendant Clark County herein, by its attorneys and solicitors, Montgomery & Wood and Harrison & Mahan, and enters appearance in the above-entitled cause.

Afterwards, to wit, on rule day, Monday, May 7th, 1888, the following proceedings were had and appear of record in said cause, to wit:

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY *et al.*, Defendants.

Now, at this day, comes the defendant Scotland County, by its solicitor, John C. Moore, Esq., and files its answer in the above-entitled cause.

Which said answer is in words and figures, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri, Northern Division.

THE KEOKUK AND WESTERN RAILROAD COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing *et al.*, Defendants. } In Equity.

The answer of The County Court of Scotland County, Missouri; Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing, defendants, to the bill of complaint of The Keokuk
20 and Western Railroad Company, complainant.

These defendants, now and — all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, — or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say:

These defendants deny that the Missouri, Iowa and Nebraska Railway Company succeeded to and became vested with all the rights, franchises, privileges and immunities, property, and exemptions belonging to or in any way appertaining to the said Alexandria and Bloomfield Railroad Company, and these defendants more particularly aver that the said Missouri, Iowa and Nebraska Railway Company did not succeed to nor become vested with the exemption (if any) of the stock of the said Alexandria and Bloomfield Railroad Company from taxation; the railroad of the Alex-

andria and Bloomfield Railroad Company never was completed; the railway of the Missouri, Iowa and Nebraska Railway Company never was completed; the railway property of the said Missouri, Iowa and Nebraska Railway Company was always liable to taxation; the circuit court of Scotland county, Missouri, in the suit of Scotland County against The Missouri, Iowa and Nebraska —, mentioned in the bill, did not hold; decide, or adjudge that section 9 of the charter of the Alexandria and Bloomfield Railroad Company exempted the property of the said Missouri, Iowa and Nebraska Railway Company from all taxation, whether State, county, municipal, or otherwise, for the period of twenty years after the completion of said railway. It only adjudged that the said railway company was not liable for the taxes sued for in that suit and nothing more.

The United States circuit court for the eastern district of Missouri, in the suit of James Secor and other stockholders
21 of the Missouri, Iowa and Nebraska Railway Company against the said railway company and the county courts, the judges thereof, and collectors of revenue of the counties of Clark, Scotland, and Schuyler, did not hold, determine, or adjudicate that the charter of the Alexandria and Bloomfield Railroad Company exempted the property of the Missouri, Iowa and Nebraska Railway Company from taxes for the period of twenty years after the completion of its railway. No such question was presented by the pleadings or adjudged or determined by the court. The only question presented by the pleadings and adjudged by the court was the liability of said railway company for the taxes for the particular years prior to 1879. But if it be true that this court did in said suit of James Secor and others against said railway company and others so adjudge, and did enjoin and restrain the said county courts, the judges thereof, and the collectors of revenue of said counties and their several and respective successors in office from levying or attempting to levy, collecting or in any manner attempting to collect, from or of the said railway company any taxes whatever until the expiration of the exemption limited in the charter, and if said injunction be, as is claimed be complainant herein, still in full force and virtue in favor of the complainant herein as successor to and privy of the said railway company, then these defendants submit to the court that the complainant ought not to be permitted to have or maintain this suit for the same relief.

These defendants did not and have not in any manner or at any time wrongfully contrived to injure the said railway company.

The county court of Scotland county did not levy or pretend to levy and have not levied any taxes upon the said railway property for the years 1883 and 1884 or for either of said years. The said county court of Scotland did as by law it well might, and in all respects in compliance with the laws of the State of Missouri (all the necessary and proper preliminary measures and proceedings having been duly and legally taken), levy upon the said railway
22 property taxes for the years 1885, 1886, 1887, and had the same duly and properly extended upon the tax books, and

duly delivered the same to the collector of the revenue of said county for collection. The taxes, exclusive of penalties, interest, or costs, amount respectively to the following sums, to wit: For the year 1885, $2,020.10; for the year 1886, $1,583.07; for the year 1887, $3,337.60, and no more.

These defendants admit that said railway company mortgaged its property in the year 1870, as stated in the bill herein, and that, said railway company having made default in the year 1879, foreclosure proceedings were begun and a decree and supplemental decree of foreclosure made and sale of the property made to Jesup and Thacher, and said sale confirmed and conveyance made to said Jes-p and Thacher and by them to the complainant herein, all as stated in the bill herein.

The conveyance to the said Jesup and Thacher was made about the first day of October, 1886, and the conveyance by them to complainant was made about the twenty-sixth day of November, 1886. These defendants also admit that possession of said property was delivered to complainant about December 3, 1886, and that complainant since said conveyance has been the owner of said property.

The Wabash, St. Louis and Pacific Railway Company was a party to the said foreclosure suit, and its interest in the said property passed to complainant by virtue of the said proceedings and conveyances.

The complainant did not take the said property free from the taxes levied on said property as aforesaid, but, on the contrary, took same subject thereto.

The collector of Scotland county is not and was not at the time of filing said bill threatening and does not and did not at said time intend to seize or sell or interfere with the property of the complainant for the said taxes or any of them.

Two suits by the State of Missouri against the complainant,
25 each for the tax of a particular year, have been instituted, but not by these defendants or either or any of them. One of said suits was brought in the circuit court for Scotland county, Missouri, and such proceedings were duly had and taken therein that the complainant herein appeared and submitted itself to the jurisdiction of said court without objection thereto, and thereafter said court duly considered, determined, and adjudged that the said taxes were duly and legally assessed and levied upon said property and were a valid and subsisting lien thereon, and that said property was subject to taxation and not exempt therefrom, and said judgment is still in full force and virtue and not in anywise paid, satisfied, cancelled, set aside, discharged, or reversed, and said judgment is *res judicata* of the issues involved in this suit, and the complainant is barred and estopped thereby from claiming that said property is not or was not exempt from taxation. The said complainant has appealed from the said judgment and its appeal is now pending in the supreme court of Missouri.

The other of said suits was an intervention in the foreclosure suit aforesaid in the circuit court of the United States for the southern district of Iowa for the tax of the year 1885 by the State of

Missouri. The complainant appeared to and made defence against said intervention, and submitted itself to the jurisdiction of said court, and insisted upon said intervention being brought to a hearing, and moved that the said State of Missouri be required to make a deposit for costs, and thereby compelled the said State to make such deposit, and said intervention has been tried before the master in chancery of said court, to whom it was referred, but has not been decided by him. The defendants do not and did not at the time of filing said bill contemplate or intend taking any steps of any kind for the collection of the taxes of the other years aforesaid until the said suits have been brought to a final termination.

These defendants in all that they have done in the prem-
24 ises are simply acting as officers of the State of Missouri and in its behalf and have no personal interest of any kind in any of the matters and things set up in the said complainant's said bill of complaint, and they submit to the court that the State of Missouri is the real party against whom the bill of complaint in this suit is brought, and that this court ought not to entertain or proceed further in this suit and has no jurisdiction of the cause.

The said Missouri, Iowa and Nebraska Railway Company is and ever since the 30th day of December, 1879, has been utterly insolvent and unable to pay its debts. February 12, 1880, the said railway company made and entered into the contract with a committee of its bondholders and the Wabash, St. Louis and Pacific Railroad Company, a true copy whereof is hereto attached, marked "Exhibit A," and made part hereof as fully as if set forth at large herein, whereby, among other things, it agreed to lease its railway and property to the said Wabash, St. Louis and Pacific Company; and afterwards, on September 3, 1880, did, in pursuance of said contract, lease its entire railway and property for the term of ninety-nine years, renewable forever, to the Wabash, St. Louis and Pacific Railway Company, a true copy of which lease is hereto attached, marked "Exhibit B," and made part thereof, and thereupon all the property involved in this suit and mentioned and described in the bill of complaint herein was delivered by the said Missouri, Iowa and Nebraska Railway Company to the said Wabash, St. Louis and Pacific Railway Company, and since that time the said property has never been owned or possessed by the Missouri, Iowa and Nebraska Railway Company, and same has not since then been its property, and same has ever since and before said time been subject to taxation.

These defendants are in no way concerned in the allegations of complainant, so far as the same affect the territory of Clark or Schuyler counties or the persons of the other defendants, and the other defendants have no interest in this cause or the deter-
25 mination thereof, so far as Scotland county and these defendants are concerned. None of the property aforesaid was ever the property of the Alexandria and Bloomfield Company. The ninth section of the charter of the Alexandria and Bloomfield Railroad Company was duly repealed by the legislature of the State of Missouri February 27, 1875. In the year 1870 the Missouri, Iowa

and Nebraska Railway Company, for a good and valuable consideration, agreed with the county of Scotland to surrender and make no further claim of exemption from taxation of its property in said county.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said bill contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN C. MOORE,
LOUIS MYERS,
Solicitors for said Defendants.

JOSEPH G. ANDERSON, *Of Counsel.*

STATE OF MISSOURI, } *ss:*
County of Scotland, }

Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing, being duly sworn, do depose and say that they are defendants named in the foregoing answer; that they have read the same and know the contents thereof, and that the same is true.

ROBERT M. THOMPSON.
JOSEPH E. BILLUPS.
JOEL EWING.
W. W. BUFORD.

26 Subscribed and sworn to before me and in my presence on this fifth day of May, 1878.

[L. S.] JAMES P. NESBIT,
County Clerk.

Afterwards, to wit, on the same day, the following was entered and appears of record in said cause:

(*Order.*)

In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri.

KEOKUK & WESTERN RAILROAD CO. }
vs.
SCOTLAND COUNTY *et al.* }

It is hereby ordered that the time for showing cause why an interlocutory injunction should not issue in this cause be, and the same is hereby, extended until Monday, the 28th day of May, A. D.

1888, and that in the meantime the existing restraining order be continued in force, and that defendants have leave to file an answer to the bill as of Monday, May 7th, 1888.

AMOS M. THAYER, *Judge.*

Afterwards, to wit, on the 29th day of May, 1888, and during the regular May term, 1888, the following, among other, proceedings were had and appear of record in said cause:

KEOKUK AND WESTERN RAILROAD COMPANY, Complainant,
vs.
SCOTLAND COUNTY *et al.*, Defendants. } 19.

Now, at this day, it is ordered that the time for showing cause why an interlocutory injunction should not issue in this cause be, and the same is hereby, extended until Thursday, the 14th day of June, 1888, and that in the meantime the existing restrain-
27 ing order be continued in force.

Afterwards, to wit, on the 5th day of December, 1888, and during the regular December term, 1888, of said court, the following, among other, proceedings were had and appear of record in said cause:

KEOKUK AND WESTERN RAILROAD COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY *et al.*, Defendants. } 19.

At this day comes the complainant, by its solicitors, and also come the defendants, by their solicitors, and, on application of complainant, leave is given to the complainant to file an amendment to its bill of complaint on or before the next rule day.

Afterwards, to wit, on the 28th day of December, 1888, the following appears of record:

KEOKUK & WESTERN R. R. Co., Complainant,
vs.
COUNTY COURT OF SCOTLAND COUNTY, MO., *et al.*, Defendants. } 19.

At this day comes the complainant, by its solicitors, and, in accordance with the leave of the court heretofore granted, files its amendment to its bill of complaint.

Which said amendment to bill of complaint is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, December Term, A. D. 1888.

THE KEOKUK & WESTERN RAILROAD COMPANY, Complainant,
28 *vs.*
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, ROBERT M. THOMPSON *et al.*, Defendants.

Amendment to Bill of Complaint in this Cause Made Pursuant to an Order of the Court Entered on the 5th Day of December, A. D. 1888.

The Keokuk & Western Railroad Company, complainant, comes now and amends its bill of complaint as follows, and states that the defendants The County Court of Scotland County, Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing pretend and give out that a former collector of said county brought a suit in the circuit court of the United States for the southern district of Iowa for the taxes of 1885, levied upon the railway property in said Scotland county in the name of and against the said Missouri, Iowa and Nebraska Railway Company as owner thereof; but your orator charges that the same was begun and filed on the 4th day of March, 1886, by filing an intervening petition in the then foreclosure proceedings of the said Farmers' Loan & Trust Company against The Missouri, Iowa & Nebraska Railway Company and the receiver of said railway property in said foreclosure proceedings, to wit, Thomas Thacher; that said intervention proceedings were not tried in said court until after the sale of said property and acquisition of same by complainant, as stated in the original bill herein; that the said receiver had been discharged in the meantime and the restraining order herein granted, when, on the — day of March, 1888, the said W. H. Wine, intervenor in said suit, pressed his suit in said cause for trial; that the master in chancery hearing said cause ruled that inasmuch as the receiver had been discharged the answer filed by him could not be considered, nor could The Keokuk & Western Railroad Company, complainant herein, make such defence in said receiver's name, and therefore, unless the said complainant
29 would enter its appearance and file answer, a judgment would be entered for said taxes. Thereupon complainant did enter its appearance and moved for said cost deposit alleged and charged *and charged* by defendant, and in due time said complainant answered, setting up the proceedings in said Secor-Singleton case, referred to in the original complaint herein; but your orator charges that said cause has not been reported upon by said master, and the proceedings have been stayed by order of this court, awaiting the decision in this case.

Said defendants also pretend and give out that a suit was brought by said former collector, W. H. Wine, in the circuit court of Scotland county, Missouri, for taxes of 1886 levied on said railroad property in said county, and also levied against the Missouri, Iowa & Nebraska Railway Company as owner thereof, and also pretend and charge that complainant in this cause appeared in said suit and

made defense thereto, and that judgment was rendered in said cause in said court against this complainant for the said taxes of 1886, and therefore that the same has become and now is *res adjudicata* as to such matters as were therein pleaded, whereas your orator charges that said cause was duly appealed to the supreme court of the State of Missouri, and that a supersedeas bond was given in said cause by this complainant and approved by the said court and a supersedeas granted by the said court, and the same is still pending in the said supreme court in the State of Missouri and has not been decided, and therefore your orator says are not *res adjudicata* nor are they binding as an estoppel or in any other way upon complainant in this cause as a defense thereto.

Complainant further avers and charges that by the said Secor-Singleton case, referred to in the original bill of complaint herein, it was expressly, among other —, decided and decreed that the said Missouri, Iowa & Nebraska Railway Company was completed, as was required by the charter of said Alexandria & Bloomfield Railroad Company, about the first day of December, 1872, and that the counties named, the county courts, the collectors of said counties, their successor and successors in office, were each and every one of them perpetually enjoined and restrained from levying or attempting to levy, from collecting or in any manner attempting to collect off of the said Missouri, Iowa & Nebraska Railway Company any taxes, whether State, county, school, or municipal, of whatever kind or character, until the expiration of the exemption limited in the charter of said railway company, to wit, December 1st, 1892, and that the said Missouri, Iowa & Nebraska Railway Company, by its officers, agents, or employés, were each and every one of them also perpetually enjoined from paying any such taxes as have or may be levied for the years prior to the said first day of December, 1892.

Your orator further states that all of the defendants in this cause give out and pretend that in all they or any of them have done in the way of levying or attempting to collect taxes on the property aforesaid, as charged in said complaint, that they, the said defendants, have only acted as officers of the State of Missouri and in its behalf, and therefore have no personal interest of any kind in any of the matters or things set up in such complaint, and as such defendants they have no real interest in the subject-matter of this suit, but are acting as agents for the State of Missouri, and that the said State of Missouri is the real party in interest; wherefore your orator says that the defendants are not acting for the said State of Missouri, but for their own behalf, and that they are the real and only parties in interest.

Your orator further says that the defendants give out and pretend that the said property was, by the said Missouri, Iowa & Nebraska Railway Company, leased to the Wabash, St. Louis & Pacific Railway Company, and that therefore the same became and was, from the date of said lease, to wit, about the first day of September, 1880, taxable because of said lease, and that the said St. Louis & Pacific Railway Company thereupon became the sole and

absolute owner of the said property, franchises, and privileges; wherefore your orator charges that the said Wabash,
31 St. Louis & Pacific Railway Company was a corporation duly organized and existing — the laws of the State of Missouri, and that the said lease was duly authorized by the laws thereof, and that thereupon the said Wabash, St. Louis & Pacific railway did not become the owner or owners in anywise, but that the said Missouri, Iowa & Nebraska Railway Company remained the owner thereof, and that the same was not rendered liable to taxation by virtue of said lease or for any cause in the premises; that the said lease was subject to certain conditions and limitations therein—that is to say, the said Wabash Company covenanted to maintain and operate the said railway, fully maintain the equipment as it was at the date of said pretended lease and any further equipment that might be supplied at its own cost and expense, and agreed to keep the said railway in good condition and repair for the full term of the lease, setting aside 30% of the gross earnings by which to pay interest on bonds secured by mortgage on said property and to pay the ballance of said 30% in each year to the said Missouri, Iowa & Nebraska Railway Company; also the said Wabash Company further expressly guaranteed to pay the interest on said bonds in each year such interest matured and fell due. These conditions will more fully appear in copy of said lease as Exhibit "E" in defendants' answer, to which reference is here made.

Complainant says that long prior to the levying of the taxes or any part thereof sought to be enjoined by the complainants herein, to wit, March 1st, 1884, said Wabash Company became wholly insolvent, failed, and refused to pay any interest on said bonds or to maintain and operate said railway under the covenants in said lease, and by decree of the circuit court of the United States for the eastern district of Missouri, made on May 24th, 1884, its entire property was placed in the hands of receivers during the pendency of certain foreclosure proceedings
32 therein, and, so continuing and *and* failing to comply with the covenants in said lease, the circuit court of the United States for the southern district of Iowa, eastern division, on or about the second day of July, 1885, and upon the request of the Farmers' Loan & Trust Company, trustee in the mortgage made to it by the said Missouri, Iowa & Nebraska Railway Company in the year of 1870, and in and as part of the foreclosure case referred to in the original complaint herein, appointed Thomas Thacher receiver of the said Missouri, Iowa & Nebraska Railway Company and its property thereof, and thereafter said receiver took possession of said property and operated the same under the orders of said court until the sale and delivery to complainant herein, on said 3rd day of December, 1886, as stated in the original complaint. Complainant further avers and charges that it was adjudged and decreed by the circuit court of the United States for the district of Missouri, during the September term of 1885 thereof, in a cause therein depending wherein the said Wabash, St. Louis & Missouri Railway Company and the said Missouri, Iowa & Nebraska Rail-

way Company were each parties thereto, to wit, in the cause in equity *in* The Central Trust Company of New York and others against The Wabash, St. Louis & Pacific Railway Company and others, consolidated cause, that the said lease of the said Missouri, Iowa & Nebraska Railway Company to the said Wabash, St. Louis & Pacific Railway Company was conditional, and for the breaches of the terms of said lease by the said Wabash Company the same had become and was lawfully terminated, and your orator charges and avers that such matters and things were and became and are *res adjudicate*, all of which will more fully and at large appear by copy of said decree, which complainant will produce when and where this honorable court shall direct.

Your orator further states that the defendants pretend and give out that the 9th section of the charter of the said Alexandria & Bloomfield Railroad Company was duly repealed by the legislature of the State of Missouri on the 27th day of February, 1875, and that, therefore, since said date the property became and ever since
33 has been subject to taxation. Wherefore your orator charges that the said act was not repealed or in anywise affected by the laws of said State, for the reason that if any such laws were passed, as claimed by defendants, that the same were null and void within the meaning of section 10, article 1, of the Constitution of the United States, as impairing the obligation of contract between the said State of Missouri and the said Alexandria & Bloomfield Railroad Company, the Missouri, Iowa & Nebraska Railway Company, and the said Keokuk & Western Railroad Company, as legal successors of all such rights, privileges, exemptions, and immunities as were granted and contained in said charter of the said Alexandria & Bloomfield Railroad Company; that the said exemption was such an errepealable contract was fully adjudicated and decided by the said circuit and supreme courts of the State of Missouri and by the said circuit court of the United States in said Secor-Singleton case, referred to in the original complaint herein, and all of which, complainant says, became and *is res adjudicate*.

And your orator further says that certain of defendants pretend and allege that as to the said county of Scotland said Missouri, Iowa & Nebraska Railway Company agreed with the said county of Scotland, in about the year 1870, to make no further claim of exemption from taxation of its property in said cause, but your orator charges that no such contract or agreement for any cunsideration whatever was ever entered into, as pretended and claimed, and that, furthermore, if the same had been done, as given out and pretended, such facts and agreements existed and were known to the said county of Scotland when the said Secor-Singleton case was being heard and tried in the United States court, and that it was thereupon the duty of said County of Scotland, as a defendant in said cause, to ascertain and bring forward such pretended claim and have the same adjudicated among the other matters in said cause, and, whether the same was adjudicated or not, all such matters
34 became and were and are finally decided and adjudicated in said court, and are therefore *res adjudicatea*, and the defend-

ants are estopped from making such claim or pretense, whether the same be true or not.

Your orator therefore prays that the defendants be required to answer said bill of complaint and these amendments thereto, and that a provisional and perpetual injunction be granted as prayed for in said bill of complaint, and for all proper relief.

F. T. HUGHES,
Solicitor & of Counsel for Complainant.

STATE OF IOWA, }
County of Lee, } ss:

F. T. Hughes, being duly sworn, deposeth and sayeth that he is president or The Keokuk & Western Railroad Company, complainant in the foregoing amendment to bill of complaint; that he has read the same and knows the contents thereof; that the said bill & amendment are true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as — these matters he believes them to be true.

(Signed) F. T. HUGHES.

Sworn to before me this 27 day of Dec., 1888.

[L. S.] (Signed) L. HAGERMAN,
Notary Public.

35 Afterwards, to wit, on the 15th day of January, 1889, the following proceedings were had and appear of record in said cause:

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY *et al.*, Defendants. } In Chancery.

At this day comes the complainant, by its solicitor, and, by leave of the court first had, files a printed bill as a substitute for the original bill and amendment now on file herein, and also files two notices; which said two notices and the endorsements thereon are in words and figures, to wit:

In the Circuit Court United States, Northern Division, Eastern District of Missouri.

KEOKUK & WESTERN RAILROAD COMPANY, Compl't,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, *et al.* } Injunction.

To the County Court of Clark County, Missouri, J. E. Todd, Mike Seyb, George Harter, & J. H. Million or their solicitor, T. L. Montgomery, Esq.:

Take notice that I shall ask of Judge Thayer, of said court, permission, on J'n'y 15, 1889, or as soon as counsel can be heard, for

leave to file the enclosed bill and amendment in said cause now on file in said cause, when and where you may attend if you may desire.

Jan'y 10, 1889.

F. T. HUGHES,
Sol. for Compl'ts.

(Endorsed:) Received the within notice Jan'y 11, 1889.
36 T. I. Montgomery, att'y for Clark County, defendants. No. 19. Keokuk & Western R. R. Co. *vs.* County Court of Scotland County *et al.* Notice. Filed Jan'y 15, 1889. Geo. C. Moore, clerk.

In the Circuit Court of the United States, Northern Division of the Eastern District of Missouri.

KEOKUK AND WESTERN RAILROAD COMPANY, Complainants,
against
THE COUNTY COURT OF SCOTLAND COUNTY *et al.*

To John C. Moore, solicitor for defendants, County Court of Scotland County, R. M. Thompson, W. W. Buford, J. E. Billups, & Joel Ewing:

Take notice that I will ask Judge Thayer, at his chambers, in St. Louis, on Monday, the 14th instant or as soon thereafter as counsel can be heard, for leave to file the printed bill & amendment thereto, a copy of which is herewith presented as a substitute for the bill & amendment now on file in above cause.

F. T. HUGHES,
Sol. for Complainants.

(Endorsed:) The within notice was served on me by delivery, at my office, in Scotland county, Missouri, this 9th day of January, 1889. John C. Moore, solicitor for respondents named. No. 19. Keokuk & Western R. R. Co. *vs.* County Court of Scotland County *et al.* Notice. Filed Jan'y 15, 1889. Geo. C. Moore, clerk.

37 And the said printed bill as a substitute for the original bill and amendment and the endorsements thereon is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, May Term, 1888.

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; ROBERT M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing, The County Court of Clark County, Missouri; J. E. Todd, Mike Seyb, George Harter, and J. H. Million, The County Court of Schuyler County, Missouri; William Logan, N. Sloop, T. G. Neeley, and N. T. Roberts, Defendants.

To the judges of the circuit court of the United States for the northern division of the eastern district of Missouri:

The Keokuk & Western Railroad Company, a corporation organized and existing under the laws of the State of Iowa and a citizen of said State, brings this its bill against Robert M. Thompson, Joseph E. Billups, W. W. Buford, Joel Ewing, J. E. Todd, Mike Seyb, George Harter, J. H. Million, William Logan, N. Sloop, T. G. Neeley, N. T. Roberts, all residents and each a citizen of the State of Missouri; and thereupon your orator complains and says that the amount in controversy in this suit exceeds, exclusive of interest and
38 costs, the sum of $2,000.00.

Your orator further states that by an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved Feb. 9th, 1857, the Alexandria & Bloomfield Railroad Company became and was duly incorporated, possessed of all the powers, privileges, rights, immunities, exemptions, franchises, and properties, and subject to all the liabilities, obligations, and restrictions mentioned in said act; that on about the 13th day of September, A. D. 1864, said company was duly organized and directors elected as required by section 4 of said act, and immediately said company commenced and proceeded to carry on its proper business and railroad operations under the privileges and conditions in said act mentioned; that by an act of the General Assembly entitled "An act to amend an act entitled An act to incorporate the Alexandria & Bloomfield Railroad Company," approved Feb. 9th, 1857, which amendatory act was approved Feb. 9, 1866, and by the due acceptance of the 1st section of said amendatory act the corporate name of said railroad company was changed to that of the Alexandria & Nebraska City railroad.

That in pursuance of the general laws of the States of Missouri and Iowa, authorising consolidation of railroad companies owning a connected railroad line in said States, the said Alexandria and Nebraska City Railroad Company, on or about the 26th day of March, 1870, duly and legally consolidated with the Iowa Southern Railroad Company, a railway company duly incorporated, organized, and existing under the laws of the State of Iowa, and thereafter the said Alexandria & Nebraska City Railroad Company and the said Iowa Southern Railway Company became merged and consolidated into

and formed one company under the corporated name of the Missouri, Iowa & Nebraska Railway Company.

Your orator further says that the said Missouri, Iowa & Nebraska Railway Company by such consolidation succeeded to and
39 became vested with all the rights, franchises, privileges, immunities, property, and exemptions belonging to or in any way appertaining to the said Alexandria & Bloomfield Railroad Company, and that section 9 of the charter of the said Alexandria & Bloomfield Railroad Company is as follows: "The stock of said company shall be exempt from taxation for the period of twenty years after its completion." Said railway was completed to the State line between the said States of Missouri and Iowa about the 31st day of December, 1872, by reason of which the railway property of the said Missouri, Iowa & Nebraska Railway Company was not nor could it become liable for any taxes whatever upon its railway property until the said twenty years had elapsed from the said 31st day of December, 1872.

Your orator further states that notwithstanding the exemption from taxation aforesaid the said county court of Scotland county in the year 1872 proceeded to and did levy and attempt to collect State, county, and municipal taxes upon the railway property aforesaid, and, having levied the same, did, on or about the April term, 1873, cause suit to be instituted in the circuit court of said Scotland county, Missouri, against the said Missouri, Iowa & Nebraska Railway Company, as defendant, to cover the said State, county, and municipal taxes then alleged to be due and payable for the year 1872 on said railway property in said county, the title of said suit being Scotland County against the said Missouri, Iowa & Nebraska Railway Company; that to said suit the said Missouri, Iowa & Nebraska Railway Company appeared and made answer, alleging, among other things, that the said railway company was not liable to pay said taxes nor any part thereof, by reason of the exemption contained in said section 9 of the said Alexandria & Bloomfield railroad charter, and thereafter such proceedings were had in said cause in said court, and that said court sustained the said answer and rendered final judgment in favor of the said railway company,
40 the said circuit court holding and deciding that said section 9 of the said Alexandria & Bloomfield charter did not exempt the property of the said Missouri, Iowa & Nebraska Railway Company, described in the petition herein, from all taxation, whether State, county, municipal, or otherwise, for the period of twenty years after the completion of said railway; that thereafter such further proceedings were had in said cause that on appeal to the supreme court of Missouri the judgment of the said Scotland county circuit court was in all things affirmed. The report of said cause containing an agreed statement of facts upon which said cause was tried will be found in the 65th volume, beginning at page 123, of the Missouri Supreme Court Reports, the record of which cause your orator is ready and willing to produce when and where this honorable court shall direct.

That thereafter, in the year 1881, James Secor and other stock-

l olders of the Missouri, Iowa & Nebraska Railway Company filed a bill in the circuit court of the United States for the eastern district of Missouri praying an injunction against the said Missouri, Iowa & Nebraska Railway Company from paying certain taxes alleged to be due upon the said railway property in the said Scotland county, and also the said Clark and Schuyler counties, in said State, and also to enjoin the county court, the judges thereof, and collectors of revenue in said counties of Clark, Scotland, and Schuyler for the year 1881 or any previous years; that thereafter such proceedings were had in such court in said cause; that said circuit court held and determined that the said charter of the said Alexandria & Bloomfield Railroad Company did exempt the property of the said Missouri, Iowa & Nebraska Railway Company from all taxes for the period of twenty years after the completion as aforesaid, the report of which is found in the 9th vol. of the Federal Reporter, beginning at page 809.

Your orator avers and charges that the matters and things set fourth in the said circuit court of Scotland county and the said circuit court of the United States — adjudicated and determined
41 upon the facts stated in said causes; that the said Missouri, Iowa & Nebraska Railway Company was not nor could it be made liable to pay the taxes upon its property for the period of twenty years after completion, and the same became and is *res adjudicata*.

Your orator further states notwithstanding the said judgment and decree of the courts aforesaid the said county courts of the said Scotland, Schuyler, and Clark counties, wrongfully contriving to injure the said Missouri, Iowa and Nebraska Railway Company, proceeded to and pretended to levy other State, county, and municipal taxes upon the said railway property lying and being in the respective counties in the years following and especially the years 1883, 1884, 1885, 1886, 1887, and had the same extended upon the tax books of said counties in the respective years, the said county courts delivering the same to the collector thereof with directions to collect the same in the manner provided by the law for collecting taxes in the said State of Missouri, where taxes are legally levied and due upon railroad property in said State; that such collectors will either sue your orator or seize and sell the property by virtue of said illegal tax levies to compel it to pay same; that, as your orator is informed and believes and so states the facts, the amount of said taxes so levied in the county of Scotland exceeds the sum of $3,000.00, exclusive of penalties, interest, and costs claimed to be due, and that like amounts are also claimed to be due upon the said levies in each of the other counties of Schuyler and Clark.

Your orator further states that some time in the year 1870 the said Missouri, Iowa & Nebraska Railway Company mortgaged its entire railway property and franchises to the Farmers' Loan & Trust Company, a corporation, as trustee, to secure certain bonds in said mortgage or deed of trust described and the interest thereon; that thereafter, in the year 1879, the said railway company having made

default in payment of said interest due upon the said bonds,
42 foreclosure proceedings were begun in the circuit court of the United States for the district of Iowa, at the city of Des Moines, in said State, and that such proceedings were had in said cause and said court; that on the 22nd day of October, 1880, a decree of foreclosure was entered therein, which decree remained unexecuted, and thereafter a supplemental decree of foreclosure was had on said cause on or about the 8th of July, 1886, the said supplemental decree being entered in the said United States circuit court for the southern district of Iowa, eastern division, at Keokuk, to which said cause had by law been transferred in the meantime because of a division of the said district of Iowa and establishment of the said circuit court for the eastern district at Keokuk as aforesaid; that thereafter, on the 13th day of August, 1886, in pursuance of said decree, all the said railway property and franchises of the said Missouri, Iowa & Nebraska Railway Company were sold in the said city of Keokuk to Morris K. Jesup, Henry C. Thacher, by P. T. Lomax, Esq., master in chancery in said court and special commissioner, to make said sale; that the said sale, on or about the 21st day of September, 1886, was duly confirmed by the said United States circuit court, and that thereafter the said Jesup and Thacher, having paid the purchase price as bid, the said property, premises, and franchises of the said railway company aforesaid was by said Lomax, as such master, duly conveyed to the said Jesup and Thacher, which said conveyance included all the railway property, premises, and franchises heretofore described in the said States of Missouri and Iowa; that thereafter, for a good and valuable consideration, the said Jesup and Thacher conveyed the premises, property, and franchises aforesaid to your orator, the said Keokuk & Western Railroad Company, and thereafter, on or about the 3rd day of December, 1886, in pursuance of the said purchase and decree of the said circuit court, your orator having paid the purchase price agreed to be paid, the said Jesup and Thacher, by order of the said
43 United States circuit court, on said last-mentioned date, delivered possession of the said railway property and franchises to your orator, since which time it has been and still is the owner in possession of and operating the said railway property, as under the laws of the States of Iowa and Missouri it has authority so to do.

Your orator further avers that it became the owner of the said property and franchises by virtue of the said charter of the said Alexandria & Bloomfield Railroad Company and of the said Missouri, Iowa & Nebraska Railway Company and of the said purchase, decree, and sale of the said courts, free from any taxes or debts thereon, in the said State of Missouri, and especially of the taxes attempted to be levied and collected as hereinbefore stated.

Your orator further states that notwithstanding it did not on the 1st day of Jan., 1886, or at any time in said year prior to the said — day of December, 1888, own or operate said railway or any part thereof, yet the said county courts of the said counties of Scotland, Clark, and Schuyler caused taxes on the property aforesaid to be

levied in the respective counties aforesaid against your orator as owner of said property, and had the same extended — the respective tax books in said county, and delivered the same to the collector thereof, with directions and orders to collect the same in the manner provided by law, where taxes are legally assessed and collected; that the said collectors are in possession of the said tax books for said counties, with the taxes extended therein as aforesaid, and are demanding, threatening, and attempting to enforce the collection of said taxes in all of the years aforesaid, and are threatening to seize and sell the property of your orator in said counties and State for the purpose of satisfying said alleged to be due taxes, and are threatening and proposing, under the forms of the laws of said State, to institute suits against your orator in the courts of competent jurisdiction in the said counties and to prosecute the
44 same with a view of enforcing the said illegal and unjust taxes so pretended to be levied, and are in every way threatening a multiplicity of suits for the enforcement of said collections, as it may seem to said county courts and *and* collectors thereof as proper, and that your orator will be compelled to pay or submit to said suits, levies, seizures, and other proceedings unless the said parties, defendants herein, are enjoined and restrained by this honorable court from so doing.

Your orator avers that it believes and so charges the facts to be that no taxes whatever are due upon any of the property in the said State of Missouri, and that the defendants have no right to enforce or attempt to enforce the collection of any part thereof as claimed and alleged to be due.

That defendants Robert M. Thompson, Joseph E. Billups, and W. W. Buford are the duly elected and qualified, and acting as such, judges of the county court of said Scotland county, and that defendant Joel Ewing is collector of revenue of said Scotland county; that defendants William Logan, N. Sloop, T. G. Neeley are the duly elected and duly qualified judges of the county court of said Schuyler county, and defendant N. T. Roberts is collector of revenue thereof; that defendants J. E. Todd, Mike Seyb, and George Harter are the duly elected and qualified judges of the county court of said Clark county.

Therefore, in consideration of the premises aforesaid, may it please your honors to grant unto your orator a writ of injunction issuing out of and under the seal of this honorable court or issued by one of your honors according to the form of the statutes in such cases made and provided perpetually enjoining and restraining the said defendants and each and every of them, their clerks and attorneys, from direcly or indirectly collecting or attempting to collect, either by distress, seizure, and sale of your orator's property, by institution and prosecution of any suits in any of the courts of the State of Missouri, or by any other means whatever, any of the taxes, interest, penalties, and costs alleged and claimed to be
45 due herein upon any of the property of your orator in said State of Missouri for the year and years aforesaid, and for such other orders — proceedings in this cause as to your honors may

seem meet; and may it please your honors to grant unto your orator a provisional or preliminary injunction issuing out of and under the seal of this honorable court enjoining and restraining the defendants and each of them, their clerks and attorneys, to the same purport, tenor, and effect herein prayed for in regard to said perpetual injunction.

And your — further avers that it has good reason to believe and does believe that if notice of the application for this provisional and preliminary injunction is given to the said defendants or any of them they will, before the day for the hearing of said preliminary injunction on said action, institute suits against your orator in the various counties in said State, in the courts of said State, and thereby deprive this honorable court of jurisdiction in the premises; wherefore your orator prays that a restraining order issue at once out of and under the seal of this honorable court against the said defendants and each of them, restraining them to the same purport, tenor, and effect hereinbefore prayed for in regard to said perpetual injunction until such time as your orator can give notice when and where your orator will apply for the provisional and preliminary injunction hereinbefore prayed.

And may it please your honors to grant unto your orator a *right* of subpœna of the United States of America, issued out of and under the seal of this honorable court, directed to the said Robert F. Thompson, Joseph E. Billups, W. W. Buford, Joel Ewing, J. E. Todd, Mike Seyb, George Harter, J. H. Million, William Logan, N. Sloop, T. G. Neeley, N. T. Roberts, as defendants, commanding them and each of them, on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and de-
46 cree as may be made against them and each of them; and your orator, as in duty *d*ound, will ever pray.

F. T. HUGHES,
Solicitor and Counsel for Complainant.

STATE OF IOWA, }
County of Lee, } ss:

F. T. Hughes, being duly sworn, deposeth and sayeth that he is president of The Keokuk & Western Railroad Company; complainant in the foregoing bill named; that he has read the same and knows the contents thereof; that the said bill is true of his own knowledge except as to those matters which are therein stated to be on his information and belief, and as — these matters he believes them to be true.

F. T. HUGHES.

Sworn to before me this 8 day of Jan'y, 1889. My commission as notary expires July 4th, 1892.

[L. S.]

L. HAGERMAN,
Notary Public.

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, December Term, A. D. 1888.

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, ROBERT M. THOMPSON, *et al.*, Defendants. } In Chancery.

47 *Amendment to Bill of Complaint.*

In this cause, *made* pursuant to an order of the court entered on the 5th day of December, A. D. 1888—

The Keokuk & Western Railroad Company, complainant, comes now and amends its bill of complaint as follows, and states that defendants The County Court of Scotland County, Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing pretend and give out that a former collector of said county brought a suit in the circuit court of the United States for the southern district of Iowa for the taxes of 1885 levied upon the railway property in said Scotland county in the name of and against the said Missouri, Iowa & Nebraska Railway Company as owner thereof, but your orator charges that the same was begun and filed on the 4th day of March, 1886, by filing an intervening petition in the then foreclosure proceedings of the said Farmers' Loan & Trust Company against the Missouri, Iowa & Nebraska Railway Company and the receiver of the said railway property in said foreclosure proceedings, to wit, Thomas Thacher; that said intervention proceedings were not tried in said court until after the sale of said property and acquisition of same by complainant, as stated in the original bill herein; that the said receiver had been discharged in the meantime and the restraining order herein granted, when, on the — day of March, 1888, the said W. H. Wine, intervenor in said suit, pressed his suit in said cause for trial; that the master in chancery hearing said cause ruled that, inasmuch as the receiver had been discharged, the answer filed by him could not be considered, nor could The Keokuk & Western Railroad Company, complainant herein, make said defence in said receiver's name, and therefore, unless the said complainant would enter its appearance and file answer, a judgment would be entered for said taxes. Thereupon complainant did enter its appearance and move for said cost deposit alleged and charged by defendant, and in due time said complainant answered,
48 setting up the proceedings and record in said Secor-Singleton case referred to in the original complaint herein; but your orator charges that said cause has not been reported upon by said master, and the proceedings have been stayed by order of this court, awaiting the decision in this case.

Said defendants also pretend and give out that a suit was brought by said former collector, W. H. Wine, in the circuit court of Scotland county, Missouri, for taxes of 1888 levied on said railroad property in said county against the Missouri, Iowa & Nebraska Railway Company as owner thereof, and also pretend and charge that complainant in this cause appeared in said suit and made de-

fense thereto, and that judgment was rendered in said cause in said court against this complainant for the said taxes of 1886, and therefore that the same has become and now is *res adjudicata* as to such matters as were therein pleaded; whereas your orator charges that said cause was duly appealed to the supreme court of the State of Missouri, and that a superced-as bond was given in said cause by this complainant and approved by the said court, and a superced-as granted by the said court, and the same is still pending in the said supreme court in the State of Missouri and has not been decided, and therefore your orator says the matters and things are not *res adjudicata*, nor are they binding as an estoppel or in any other way upon complainant in this cause as a defense thereto.

Complainant further avers and charges that in said Secor-Singleton case referred to in the original bill of complaint herein the counties of Scotland, Schuyler, and Clark were parties defendants thereto, and in said cause it was expressly, among other things, decided and decreed that the said Missouri, Iowa & Nebraska Railway Company was completed, as required by the charter of the said Alexandria & Bloomfield Railroad Company, about the first day of December, 1872, and that the counties named, the county courts, the collectors of said counties, their successor and successors in office, were each and every one of them perpetually enjoined
49 and restrained from levying or attempting to levy, from collecting or in any manner attempting to collect, off of the said Missouri, Iowa & Nebraska Railway Company any taxes, whether State, county, school, or municipal, of whatever kind or character until the expiration of the exemption limited in the *character* of said railway company, to wit, December 1st, 1888, and that the said Missouri, Iowa & Nebraska Railway Company, by its officers, agents, or employes, were each and every one of them in said suit also perpetually enjoined from paying any such taxes as have or may be levied for the years prior to the said first day of December, 1882.

Your orator further states that all of the defendants in this cause give out and pretend that in all they or any of them have done or are doing in the way of levying or attempting to collect taxes on the property aforesaid, as charged in said complaint, that they, the said defendants, have only acted as officers of the State of Missouri and in its behalf, and therefore have no personal interest of any kind in the subject-matter of this suit, but are acting solely as agents for the said State of Missouri, which is the real party in interest. Wherefore your orator says that the defendants are not acting for the said State of Missouri, but for their own behalf, and that they are the real and only parties in interest.

Your orator further says that the defendants give out and pretend that the said property was by the said Missouri, Iowa & Nebraska Railway Company leased to the Wabash, St. Louis & Pacific Railway Company, and that therefore the same became and was, from the date of said lease, to wit, about the first day of September, 1880, taxable because of said lease, and that the said Wabash, St. Louis & Pacific Railway Company thereupon became the sole and absolute owner of the said property, franchises, and privileges. Wherefore

your orator charges that the said Wabash, St. Louis & Pacific Railway Company was a corporation duly organized and existing under the laws of the State of Missouri, and that the said lease was
50 duly authorized by the laws thereof, and that thereupon the said Wabash, St. Louis & Pacific railway did not become the owner or owners in anywise, but that the said Missouri, Iowa & Nebraska Railway Company remained the owner thereof, and that the same was not rendered liable to taxation by virtue of said lease or for any other cause in the premises; that the said lease was subject to certain conditions and limitation- therein—that is to say, the said Wabash Company covenanted to maintain and operate the said railway, fully maintain the equipment as it was at the date of said pretended lease and any further equipment that might be supplied, at its own cost and expense, and agreed to keep the said railway in good condition and repair for the full term of the lease, setting aside 30 per cent. of the gross earnings by which to pay interest on bonds secured by mortgage on said property, and to pay the balance of said 30 per cent. in each year to the said Missouri, Iowa & Nebraska Railway Company, and also the said Wabash Company further expressly guaranteed to pay the interest on said bonds in each year as such interest matured and fell due. These conditions will more fully appear in the copy of said lease as Exhibit "B" in defendants' answer, to which reference is here made.

Complainant says that long prior to the levying of the taxes or any part thereof sought to be enjoined by the *complainants* herein, to wit, March 1st, 1884, said Wabash Company became wholly insolvent, failed, and refused to pay any further interest on certain bonds and to maintain and operate said railway under the covenants in said lease, and by decree of the circuit court of the United States for the eastern district of Missouri made on May 28th, 1884, its entire property was placed in the hands of receivers during the pendency of certain foreclosure proceedings therein, and, so continuing insolvent and failing to comply with the covenants in said lease, the circuit court of the United States for the southern dis-
51 trict of Iowa, eastern division thereof, on or about the 2nd day of July, 1885, and upon request of the Farmers' Loan & Trust Company, trustee in the mortgage made to it by the said Missouri, Iowa & Nebraska Railway Company in the year 1870, and in and as part of the proceedings of the foreclosure case referred to in the original complaint herein, appointed Thomas Thacher receiver of the said Missouri, Iowa & Nebraska Railway Company and its property thereof, and thereafter said receiver took possession of said property and operated the same as the property of said railway company, under the orders of said court, until the sale and delivery to complainant herein, on said 3rd day of December, 1886, as stated in said original complaint. Complainant further avers and charges that it was adjudged and decreed by the circuit court of the United States for the said district of Missouri, during ing the September term of 1885 thereof, in a cause therein depending, wherein the said Wabash, St. Louis & *Missouri* Railway Com-

pany and the said Missouri, Iowa & Nebraska Railway Company were each parties thereto, to wit, in the cause in equity *in* The Central Trust Company of New York and others against The Wabash, St. Louis & Pacific Railway Company and others, consolidated cause, that the said lease of the said Missouri, Iowa & Nebraska Railway Company to the said Wabash, St. Louis & Pacific Railway Company was conditioned, and for the said breaches of the terms of said lease by the said Wabash Company the same had become and was lawfully terminated, and your orator charges and avers that such matters and things were and became and are *res adjudicata* and *stare decisis*, all of which will more fully and at large appear by copy of said decree, which complainant will produce when and where this honorable court shall direct.

Your orator further states that the defendants pretend and give out that the said charter of the said Alexandria & Bloomfield Railroad Company was duly repealed by the legislature of the State of Missouri on the 27th day of February, 1875, and that there-
52 fore since said date the said property became and ever since has been subject to taxation; wherefore your orator charges that the said act was not repealed or in anywise affected by the laws of the said State, for the reason that if any such laws were passed as claimed by defendants that the same were null and void within the meaning of section 10, article 1, of the Constitution of the United States, as impairing the obligation of contract between the said State of Missouri and the said Alexandria & Bloomfield Railroad Company, the Missouri, Iowa & Nebraska Railway Company, and the said Keokuk & Western Railroad Company, as legal successors of all such rights, privileges, exemptions, and immunities as were granted and contained in said charter of the said Alexandria & Bloomfield Railroad Company; that the said exemption was such an irrepealable contract was fully adjudicated and decided by the said circuit and supreme courts of the said State of Missouri in the said case of Scotland County against the said Missouri, Iowa & Nebraska Railway Company, and by the said circuit court of the United States in said Secor-Singleton cae aforesaid, referred to in the original complaint herein, and all of which complainant says became and is *res adjudicata*.

And your orator further says that certain of defendants pretend and allege that as to the said county of Scotland said Missouri, Iowa & Nebraska Railway Company agreed with the said county of Scotland, in about the year 1870, to make no further claim of exemption from taxation of its property in said cause, but your orator charges that no such contract or agreement was ever entered into as pretended and claimed, and that furthermore, if the same had been done as given out and pretended, such facts and agreements existed and were known to the said county of Scotland when the said Secor-Singleton case and the said case of Scotland County against The Missouri, Iowa & Nebraska Railway Company in the said Scotland county circuit court and the said supreme court of the said State of Missouri were being heard and tried in said
53 United States and State courts, and that it was thereupon

the duty of said County of Scotland, as a defendant in said causes, to ascertain and bring forward such pretended claim and have the same adjudicated among the other matters in said causes, and, whether the same was so adjudicated or not, all such matters became and were and are finally decided and adjudicated in said courts, and are therefore *res adjudicata*, and the defendants are now estopped from making soch claim or pretense, whether the same be true or not.

Your orator prays that the defendants be required to answer said bill of complaint and these amendments thereto, and that a provisional and perpetual injunction be granted as prayed for in said bill of complaint, and for all proper relief.

F. T. HUGHES,
Solicitor — of Counsel for Complainant.

STATE OF IOWA, } ss:
County of Lee, }

F. T. Hughes, being duly sworn, deposeth and sayeth that he is president of The Keokuk & Western Railroad Company, complainant in the foregoing amendment to bill of complaint named; that he has read the same and knows the contents thereof; that the said bill and amendment thereto are true of his own knowledge except as to those matters which are therein stated to be on his own information and belief, and as to these matters he believes them to be true.

F. T. HUGHES.

Sworn to before me this 8 day of Jan'y, 1889. My commission as notary expires July 4th, 1892.

[L. S.] L. HAGERMAN,
Notary Public.

Filed as a substitute for bill and amendment now on file by agreement of parties.
Janu'y 15th, 1889.

54 (Endorsed:) Received copy this 9th day of January, 1889. John C. Moore, solicitor for Scotland county & defendants. No. 19. Amended & substituted bill. Filed Jan'y 15th, 1889. Geo. C. Moore, clerk.

Afterwards, to wit, on the 31st day of January, 1889, the following proceedings were had and appear of record in said cause, to wit:

THE KEOKUK AND WESTERN R. R. COMPANY, Complainant, }
vs. } 19.
THE COUNTY COURT OF SCOTLAND COUNTY *et al.*, Defendants. }

At this day come the defendants, The County Court of Scotland County, Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing, by their solicitor, John C. Moore, Esq., and files answer to the bill and amendment to said bill, and also file Exhibits "A," "B," and "C."

Which said answer and exhibits and the endorsements thereon are in words and figures as follows:

In the Circuit Court of the United States, Northern Division, Eastern District of Missouri, May Term, 1889.

THE KEOKUK & WESTERN RAILROAD COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, ROBERT M. Thompson, Joseph E. Billups, W. W. Buford, Joel
55 Ewing, The County Court of Clark County, Missouri, J. E. Todd, Mike Seyb, George Harter, J. H. Million, The County Court of Schuyler County, Missouri, William Logan, N. Sloop, T. T. Neeley, and N. T. Roberts, Respondents.

To the judges of the circuit court of the United States for the northern division of the eastern district of Missouri.

The joint and several answers of the County Court of Scotland County, Missouri, Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing, five of the defendants, to the bill of complaint and amendment thereto of the Keokuk & Western Railroad Company, a corporation of Iowa.

These defendants, now and at all times hereafter, reserving all manner of benefit and advantage to themselves of exceptions to the many errors and insufficiencies in said bill and amendment to said bill contained, and answering thereto as fully as if no answer to the original bill had heretofore been made, for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say:

1st. They admit the citizenship and residence of the parties as stated, but allege that the amount in controversy exceeds, exclusive of interests and costs, the sum of five thousand dollars.

2. They admit that the Alexandria and Bloomfield Railroad Company was chartered at the time alleged, and that its name was changed in manner and form as stated.

3. Respondents deny that the consolidation was made on the 26th day of March, 1879, but charge that it was done on the 3rd day of May, 1870.

4. Defendants deny that the resultant corporation, the Missouri, Iowa and Nebraska Railway Company, hereinafter for convenience called the M., I. & N., succeeded to and become vested with
56 all the rights, franchises, privileges, immunities, property, and exemptions belonging to or in any way appertaining to the said Alexandria and Bloomfield Railroad Company, and allege that such allegation in complainant's bill is a conclusion of law and should be stricken therefrom; that if a contrary allegation be not inadmissible for the same reason, then defendants say that the M., I. & N. did not so succeed, but that the right to exemption was surrendered by the consolidation, because the law prescribed that it should be before consolidation could be effective, and they assert

that the charter was surrendered on the 3rd day of May, 1870, by the voluntary act of the Alexandria and Bloomfield Company, and the M., I. & N. was then organized under the general laws of the State of Missouri.

5. Defendants deny that the State of Missouri was a party to the case of Scotland County *vs.* The M., I. & N. R'y Co., reported in the 65th volume of the Missouri Supreme Court Reports, at page 123, and they say that the State was not a party thereto; no State taxes were involved; no appearance was entered in the court by the State, nor did the State sign nor agree to any of the agreed facts therein; and defendants therefore say that the State is not bound thereby, nor are the questions there decided any adjudication of the right of the State to tax said property.

Defendants further state in reference to said suit that county taxes and school taxes payable to said county were all and the only taxes involved in said suit; that they herewith file a certified copy of the petition in said cause in proof thereof, marked "Exhibit A," and they also refer to the agreed facts 10 & 11, found on page 131 of said volume of Missouri Reports.

6. That in the said Secor case against Singleton and others, in United States circuit court at St. Louis, which complainant pleads in his bill as adjudicating the questions herein at issue, defendants say the complainants therein were all citizens of other States
57 than Missouri; that they were all stockholders of the M., I. & N. Company; that the suit was against the M., I. & N. and other defendants, and that the suit was founded on rights which, if they existed at all, the M., I. & N. could properly assert, but not in the courts of the United States; that the bill therein was filed in violation of the act of Congress of March 3rd, 1875—sec. 5, chap. 137—and of rule 94 of the rules of practice for the courts of equity of the United States, in this: That it did not contain the allegation that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance, nor did said bill set forth with particularly the efforts of the plaintiffs to secure such action as they desired on the part of the managing directors or trustees nor any efforts for that purpose with the shareholders, nor does it give the cause of failure to obtain such action. Defendants say that such allegations are required by the said act of Congress and the said rule 94, and that the court was without jurisdiction to entertain the cause because of complainant's failure to make such allegations.

7. They further allege that the defendants in that cause were all and the only officers and agents of the State for the collection of the revenue of the State within the territory of the three counties named; that they had no personal interest therein, and that the revenue belonged to the State and they were defending only as representing the State, and the State was the real and only party interested therein. Wherefore they say the State should have been named as a party defendant in said cause in order to be bound thereby, but that to sue one of the United States by citizens of another State is a suit jurisdiction of which is denied to United States courts, and

respondents say that the court was without jurisdiction in said cause because the suit was in violation of the eleventh amendment to the Constitution of the United States.

Wherefore respondents say that the matters and things set forth in the said suit of Scotland county, Missouri, and in the said
58 Secor case in the said circuit court of the United States have not adjudicated and determined upon any of the rights of the State of Missouri to tax the property of the M., I. & N. Company nor of the property of the Keokuk & Western Railroad Company, nor has a period of exemption been determined by any of said suits.

8. Defendants deny that they wrongfully contrived to injure the said M., I. & N. Company, and they deny that any taxes were levied for 1883 & 1884; that the taxes of 1885 & 1886 were levied before they came into office, they allege, and that the taxes for 1887 were levied against complainant, who had possessed the property as owner during the whole of the year. Respondents say that they levied the taxes of 1887 & 1888, and that complainant in December, 1888, paid the taxes for 1888, thus admitting its own liability on said property; that the statute, under penalties of fine and imprisonment, imperatively prescribes that they shall levy taxes on all assessed property; have the same extended on a tax book and delivered to the collector for collection, and that therefore all that they have done was by imperative command of law and not with wrongful contrivance to injure.

Reiterating, defendants say, with more particularity, that no assessment was made, no taxes levied, no collection attempted or threatened, no suit contemplated or threatened, nor seizure intended for the years 1883 & 1884 on said property.

That the taxes of 1885 & 1886 are now in suit before courts of competent jurisdiction, as will more fully appear in allegation hereinafter made, and that the levy of 1887 was made on said property against complainant personally and not against the M., I. & N.

9. Defendants admit that complainant took possession as owner December 3rd, 1886, and that they levied the taxes of 1887; but they deny that such possession and ownership was by virtue of the charter of the Alexandria and Bloomfield Company or the charter of the M., I. & N., for it had none, but was organized under
59 the general laws of the State, and they charge that the complainant took possession as owner at the time named by reason of having purchased the same of Jessup & Thacher, who were themselves purchasers at a foreclosure sale of the M., I. & N. for debt due on a mortgage.

10. Defendants deny that any taxes were levied against complainant for 1886, and charge that the levy for that year was against the M., I. & N., and that the circuit court of Scotland county, Missouri, has rendered judgment therefor against complainant, who appeared in court, filed answer, went to trial, and appealed the case to the supreme court of the State, where the same is now pending undetermined; and they further say that said suit was filed by the State of Missouri.

They further say that the taxes of 1885 were levied against the M., I. & N., and that the State of Missouri, by way of intervention, filed suit therefor in a cause then pending, entitled The Farmers' Loan & Trust Company against The Missouri, Iowa and Nebraska Railway Company, in the United States circuit court for the eastern division of the southern district of Iowa, and that complainant voluntarily appeared therein, moved to require the plaintiff, The State of Missouri, to deposit $250.00 for costs of suit, which motion was sustained by the court and complied with by the State, and after the complainant had filed the action at the bar it again appeared in the said cause in the Iowa Federal court and went to trial.

That after complainant commenced this action it caused a complaint in the nature of a criminal information to be filed in the United States circuit court at St. Louis in the said Secor case, wherein defendants were charged with having violated the decree in that cause by which the court then cited defendants Thompson, Billups, and Buford, and one William H. Wine, predecessor in office of defendant Joel Ewing, to show cause why they should not be punished for contempt; that a trial was had in said matter of contempt, and the court refused to punish these defendants and said Wine; but they charge that complainants still seeks to pun-
60 ish these defendants therein, and did, in January last, file a substituted and amended information therein, which these defendants are required to answer, by all which acts defendants say complainant estopped itself to ask the relief herein sought, and that by such acts since this action was filed estops itself to maintain this cause.

11. Defendants say that they have not threatened to seize and sell the property of complainant nor are they now threatening to do so, but, on the other hand, they declare their intention to be not to seize and sell said property, but to pursue in courts of proper jurisdiction the trial of such suits for taxes as the State of Missouri has instituted or may institute, but they allege that no suit can be filed for 1883 & 1884; that actions are now pending for taxes of 1885 & 1886, and that the taxes of 1887 are levied against complainant, who does not claim exemption in its own right, and that respondents are not therefore threatening a multiplicity of suits for the time sought to be enjoined in this cause, as the facts show.

12. Defendants say that taxes are due to the State of Missouri for the years 1885, 1886, & 1887, legally levied upon the said railroad property.

13. Defendants say that all litigation growing out of the pretended lease to the Wabash, St. Louis and Pacific Company the State of Missouri was not a party, was not interested therein, nor bound thereby.

14. Defendants further state that in the case of the State of Missouri against the Keokuk and Western Railroad Company for the taxes of 1886, which taxes had been levied against the M., I. & N. Company, which action is now pending in the supreme court of Missouri, and which complainant seeks herein to enjoin, that his honor Judge Ben. E. Turner, who tried the case, decided that the

consolidation took place under and by virtue of an act of the legislature which was passed and took effect on the 24th day of March, 1870, and is found in the laws of Missouri of 1870, at page
61 90, and that the right to exemption was surrendered by the consolidation May 3rd, 1870, and thereafter the property was subject to taxation; the said judge farther decided that the M., I. & N. had never been entitled to exemption. A certified copy of the judgment in that cause, together with the written opinion of the learned judge filed therein, is herewith filed and marked Exhibit B.

Defendants say that this is the only decision rendered in any court to which the State of Missouri was a party wherein the liability of the M., I. & N. Company to pay taxes was under consideration and decided. Defendants further say that the bond in appeal in that cause has the effect only to stay execution and does not operate as a supersedeas of said decision, as will be seen by examination of section 3713, page 632, chapter 59, article 10, Revised Statutes of Missouri of 1879, volume 1; and defendants declare the fact to be that the said court did not issue a supersedeas in said cause.

They therefore say that the question of the liability of the M., I. & N. to pay taxes to the State of Missouri from the date of its organization to the present time is decided in favor of the State, & that such question is *res adjudicata* in favor of the State.

15. Defendants also declare that prior to May 3rd, 1870, the date of consolidation, and for a considerable time thereafter, the route of said road was from Luray, in Clark county, Missouri, in a northwesterly direction, to Upton, on the Iowa line, and that not a foot of said line was then on the same route as now; that after the consolidation the route was changed by the M., I. & N. to run from Luray, in Clark county, west through Scotland county to its west line.

That the Alexandria and Nebraska City Company or the Alexandria and Bloomfield Company had never acquired a foot of right of way in Scotland county up to the date of dissolution and never owned any portion of the line in Scotland county as now built; that the right of way was all acquired from the farmers and
62 owners of — land along the route and the road constructed thereon by the M., I. & N., and no part of it was obtained from the Alexandria & Bloomfield or Alexandria and Nebraska City Company; that the same road is now the property of complainant. See Exhibits C.

16. Defendants say that they are all and the only officers or individuals within the county of Scotland who can levy and collect a legal tax; that it is their duty, by the express command of the statutes of Missouri, to levy and collect State, county, and school taxes; that they are the officers and agents of the State for that purpose; that they must levy such taxes at uniform rates on all property which is assessed in said county; that they cannot avoid such duties without subjecting themselves to penalties of fine and imprisonment; that they have no personal interest in the said

taxes, but are acting only as agents of the State, and that the State has the whole interest in the result; that in defending in this cause they do so only as agents and officers of the State of Missouri, and have no personal interest in the result of the suit, but that the State has all and the only interest therein; wherefore defendants say that this suit is a suit against the State of Missouri by a citizen of Iowa, and that this court is without jurisdiction to entertain or try the same because of the inhibition of the Constitution of the United States.

17. Defendants further say that the M., I. & N. Company became wholly insolvent in 1879, decree of foreclosure of a mortgage on the property had been rendered, and the property ordered sold, when, for the purpose of avoiding execution and sale, an arrangement was effected with the Wabash, St. Louis & Pacific Company, a corporation of Ohio, Indiana, Illinois, and Missouri, the object of which was to effect a sale of the property to the last-named corporation; that the M., I. & N. bonds were to be surrendered and Wabash bonds issued instead, and the M., I. & N. stock was to be exchanged for Wabash stock; that under the arrangement, which was
63 for ninety-nine years, renewable in like periods forever, the Wabash took possession as owner in September, 1880, and in 1884 reported to the railroad commissioners of Missouri under oath that the said Wabash Company was the absolute owner of said property. Wherefore, defendants and the State of Missouri believing the said Wabash to be the owner, proceedings were commenced to assess and tax the said property, which the said Wabash, by its attorneys, Blodgett and Grover, unavailingly resisted. Before the assessment was completed the said Wabash had become wholly insolvent, and the assessment was made, 1885, on the property against the M., I. & N. by name; that because of said contract and of holding out to the world that the said Wabash was the owner of said property defendants say that the M., I. & N. estopped itself to deny the right of the State to tax said property.

18. Defendants state that so far as this action relates to Clark and Schuyler counties and the defendants residing therein they have no concern.

19. They further state that in 1870 the M., I. & N. Company, by its officers & agents, agreed, for the consideration of two hundred thousand dollars to aid in constructing the road, to surrender any right of exemption it might have together with other considerations passing from the company.

20. Defendants allege that the railroad property has been subject to pay taxes since May 3rd, 1870, the date of consolidation, until the present time, in whosoever hands it may have been.

21. Defendants deny that they have entered into any unlawful combination and wrongfully contrived to injure complainant, but allege that in all they have done they have acted as agents of the State of Missouri in obedience to her express commands.

22. Defendants therefore say, as to themselves, that the restraining order heretofore issued should be discharged, and that the motion for injunction should be denied.

They therefore pray the court to discharge said order, and
64 that they go hence without day and recover of and from complainants their costs in this behalf most wrongfully expended; that they have judgment for their damages and attorneys' fees and for all proper relief.

ROBT M. THOMPSON.
W. W. BUFORD.
JOEL EWING.
J. E. BILLUPS.

JOHN C. MOORE,
Solicitor for Defendants.

STATE OF MISSOURI, } ss:
County of Scotland, }

Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing, being duly sworn, depose and say that they are respondents in the foregoing answer to bill and amendment to the bill of complaint herein; that they have heard read the same and know the contents thereof; that the said answer is true of their own knowledge, except as to those matters which are therein stated to be on their information and belief, and as to those matters they believe them to be true.

ROBT M. THOMPSON.
W. W. BUFORD.
JOEL EWING.
J. E. BILLUPS.

Subscribed and sworn to before me this 26th day of January, A. D. 1889.

In testimony whereof I have hereto set my hand,— affixed the seal of our probate court of Scotland county, Mo., the day and year above.

[L. S.]

J. Y. McCLINTIC,
Judge of the Probate Court Aforesaid.

65 EXHIBIT A.

STATE OF MISSOURI, } ss:
County of Scotland, }

In the Scotland County Circuit Court, April Term, A. D. 1873.

SCOTLAND COUNTY, Pl'ff,
against
THE MISSOURI, IOWA AND NEBRASKA RAILWAY, a Corporation, Def't.

For amended petition plaintiff states that the defendant is a corporation duly incorporated by the laws of the State of Missouri.

Plaintiff states further that on the — day of May, A. D. 1872, the special board of equalization provided for by section five (5) of an

act to provide for a uniform system of assessing and collecting taxes on railroads, approved March 10th, 1871, Wagner's Statutes, page 1214, section five (5), valued the property of The Missouri, Iowa and Nebraska Railway Company, the defendant herein, in the county of Scotland and State of Missouri, at one hundred and thirty-eight thousand one hundred and fifteen dollars, 138,115.00, as will more fully appear from a certified copy of the assessment herewith filed and marked Exhibit A, and which the plaintiff prays may be taken as a part of this petition; and that on the — day of July, 1872, the county court of Scotland county, by virtue of the authority given them by law, levied a county tax for all purposes on the aforesaid assessment at the following rates and for the following purposes, to wit, to defray county expenses, four mills on the dollar, known as the county revenue fund; to erect and keep in repair the bridges in said county, one mill on the dollar, known as the road and bridge fund; to open and repair public roads, two mills on the dollar, to be known as the road fund of said county; to pay interest on the public debt, two mills on the dollar, known as the county interest fund; to pay the circuit court expenses and insane persons, one mill on the dollar, known as the contingent fund, and to pay the interest of the railroad debt of said county, seven mills on the dollar,
66 known as the railroad fund; the said levy amounting in all to seventeen mills on each one dollar of the aforesaid assessment; and that according to the aforesaid rate the amount of county taxes levied for all purposes was two thousand three hundred and forty-seven dollars and ninety-five cents, 2,347.95, as will more fully appear from a certified copy of said levy herewith filed and marked Exhibit (B), and which plaintiff prays may be taken as a part of *his* petition.

Plaintiff states further that according to an act of the legislature to provide for a uniform system for assessing and collecting taxes on railroads, approved March 10, 1871, Wagner's Statutes, section (19), page 1214, she is authorized to sue the defendant for the taxes assessed and levied as aforesaid.

Plaintiff states that the defendant is justly indebted to the plaintiff, Scotland County, for the taxes aforesaid, and that the whole amount is yet due and unpaid; wherefore your plaintiff prays judgment for the sum of two thousand three hundred and forty-seven dollars and ninety-five cents, the taxes levied and assessed as aforesaid, together with two and one-half per cent. per month thereon from the 31st day of December, 1872, until the rendition day of judgment, in accordance with section 19 of Wagner's Statutes, page (1214), and whatever else is just and right in the premises.

Plaintiff states further that on the — day of May, 1872, the special board of equalization provided for by section (5) of an act to provide for a uniform system of assessing and levying taxes on railroads, approved March 10, 1872, Wagner's Statutes, page 1214, section (5), valued the property owned by defendants in the county of Scotland, State of Missouri, at one hundred and thirty-eight thousand one hundred and fifteen dollars, 138,115; and that on the — day of May, 1872, the county court of Scotland county, Missouri, by virtue

of the authority given them by law, levied a school tax for said county on the aforesaid assessment of seventy-nine and four-hundredth-cents on each one hundred dollars, and that according
67 ing to the aforesaid rate the amount of taxes levied for school purposes in and for said county was one thousand and ninety-one dollars and sixty-six cents, as will more fully appear from a copy of said levy herewith filed.

Plaintiff states further that according to the act of the legislature, approved March 10, 1871, entitled An act to provide for a uniform system of assessing and collecting taxes on railroads, Wagner's Statutes, page 1414, section (19), it is authorized to sue defendants for the taxes assessed and levied as aforesaid.

Plaintiff therefore states that the whole amount of said taxes *are* yet due and unpaid, and that the defendant is justly indebted for the amount of one thousand and ninety-one dollars and sixty-six cents, for which he asks judgment, together with two and one-half per cent. per month thereon from the (31st) day of December, 1872, until the rendition of judgment, in accordance with Wagner's Statutes, page 1214, section 19, and whatever else is just and right in the premises.

Plaintiff further states that the moneys sued for in this petition and the whole amount thereof is for taxes assessed and levied on the property of the defendant situated in the county of Scotland, to wit, on the railroad bed, right of way, rooling stock, and depots and grounds, &c., and which taxes *was* due the county.

The plaintiff therefore prays judgment for the amount of taxes due as above stated, and prays that the judgment may be declared a lien upon the property of defendant, to wit, the road-bed, depots, cars, and right of way, situated in the county of Scotland and State of Missouri; whatever else is just and right in the premises.

JOHN D. SMOOT,
Att'y for the County.

STATE OF MISSOURI, }
County of Scotland, } ss:

I, C. F. Sanders, clerk of the circuit court of Scotland county, Missouri, hereby certify that the foregoing is a true and
68 correct transcript of the amended petition in the case of Scotland County against The Missouri, Iowa and Nebraska Railway Company, as the same now appears on file in my office. I further certify that the exhibits referred to therein are not on file with the papers in said cause, and I do not know how they came to be removed therefrom.

Witness my hand and seal, at my office of circuit clerk, in Memphis, Scotland county, Missouri, this 24 day of January, 1889.

[L. S.] C. F. SANDERS, *Cir. Clk.*

(Endorsed:) Filed Jan'y 31, 1889. Geo. C. Moore, clerk.

"EXHIBIT B."

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue within and for the County of Scotland and State of Missouri, Plaintiff, *against* THE KEOKUK AND WESTERN RAILWAY COMPANY, Defendant. } 5306.

Taxes.

Be it remembered that at the August term, 1887, of this court, and on the ninth day of August, 1887, this cause coming on to be heard on the pleading filed in said cause, and the plaintiff and defendant appearing by attorneys, and all and singular the matters and facts being submitted to the court, and the court, after hearing all the evidence in the cause and the arguments of counsel, took the same under advis-ment and for further consideration until the February term, 1888, of this court, and now, on this the sixth day of February, one thousand eight hundred and eighty-eight, and on the first day of the February term, 1888, of this court, the court, after fully considering all the matters and facts and evidence
69 in said cause, doth find that at the time of the commencement of this suit William H. Wine was the legally qualified and acting collector of Scotland county, Missouri, and that the defendant was at the institution of this suit and still is a railroad corporation duly organized and existing according to law, and that said defendant owns, operates, and controles twenty-two and one-half miles of railroad in said county, consisting of road-bed, superstructure, and right of way, together with rooling stock, water tanks, engin-s, cars, depots, and other buildings; also lot nine (9), in Oak Ridge addition to the city of Memphis, in said county, and lots seven (7) and eight (8), in block five (5), in the town of Granger, in said county.

The court further finds that all of the aforesaid property of defendant in said county was subject to taxation in said county for the year 1886, and that there was legally assessed and levied against the aforesaid property of defendant in said county of Scotland, for the year 1886, for State, county, school, municipal, and other purposes, the aggregate sum of fourteen hundred and ninety-two dollars and seven cents.

The court further finds that at the time of the assessment and levy of the aforesaid taxes against the said property of defendant that the said railroad and other property of defendant in said county was owned, operated, and control-ed by the Missouri, Iowa and Nebraska Railway Company, a corporation duly organized and existing according to law, and that the aforesaid taxes so assessed and levied for the year 1886 *was* at the time of said levy a prior lien against defendant's said property in favor of the State of Missouri, and that after the aforesaid assessment and levy of said taxes was made, and before the commencement of this suit, the said Missouri,

Iowa and Nebraska Railway Company sold and transferred its said railroad and other property in Scotland county to the defendant.

The court further finds that at the commencement of this
70 suit the aforesaid taxes so levied against said property were a prior lien over all incumbrances against said property, and that the defendant took and now holds said railroad property in said county subject to the payment of same.

The court further finds that of the aforesaid taxes so assessed and levied against said property of defendant for the year 1886 there is now due and unpaid for State purposes the sum of four hundred and three dollars; for county purposes the sum of six hundred and four and $\frac{50}{100}$ dollars; for school purposes in said county the sum of four hundred and sixty-three and $\frac{45}{100}$ dollars, and for city, town, and other municipal purposes the sum of twenty-one and $\frac{12}{100}$ dollars, amounting in the aggregate to the sum of fourteen hundred and ninety-two dollars and seven cents, together with one per centum each month on said aggregate sum from the first day of January, 1887, until the same is paid as penalties thereon.

It is therefore considered and adjudged by the court that the plaintiff have and recover of and from the defendant The Keokuk and Western Railway Company the said sum of fourteen hundred and ninety-two dollars and seven cents, the taxes and debt aforesaid found to be due, together with the penalties, interest, and costs thereon, and that the same be, and is hereby, considered and adjudged to be a just and prior lien in favor of the State of Missouri on the said road-bed, superstructure, real estate, and other property of defendant aforementioned in said county, and that a special *fieri facias* be issued against the said property and that the same be sold to satisfy said taxes, penalties, interest, and costs.

Thereupon court adjourned until to-morrow morning at 8½ o'clock.

BEN. E. TURNER, *Judge.*

The K. & W. R. R. is the successor of the M., I. & N. R. R. and owns its real estate and road-bed in Scotland county.

The M., I. & N. has never paid any taxes; wherefore — the taxes assessed against it for the year 1886 this suit has been
71 instituted by the collector of this county.

In 1857 the Alexandria and Bloomfield R. R. Co. was chartered by an act of the legislature. Its charter provided that the stock of the company should be exempt from taxation for a period of twenty years from the completion of the road.

Thereafter the name of the company was changed to the Alexandria and Nebraska City R. R. Co. The Iowa Southern R. R. Co. was a non-resident of this State and a creature of the laws of Iowa. That the clause in the charter of the Alexandria and Bloomfield Company exempted the property of that road, if any existed, from taxation for the period limited there is no question. It is equally clear that any property that might have — thus far acquired in conformity to its charter would likewise have been exempt

The Iowa Southern Co., of course, had no right of exemption from taxation in this State.

In the year 1865 what is known in common parlance as the Drake constitution was adopted by the people of this State. It provides that all property except such as was used for certain educational, religious, and public purposes should be subject to taxation. This was in the year 1871 followed by appro-ate legislation providing for a uniform assessment and collection of taxes against the railroads in this State.

In the year 1870 the Alexandria and Nebraska City and the Iowa railroads consolidated under the provisions of an act passed by the legislature and approved March 24th, 1870. (See Wagner's Statutes 1872, pages 314 and 315.) Thus the M., I. & N. R. R. Co. was formed.

It may be safely presumed from the evidence that the A. & N. C. road never owned any part of the road-bed or other real estate sought to be here charged with taxes. The articles of consolidation of the two companies now before me, together with the proper certificates thereto attached, show that all the stock of the A. & N. C. Railroad Company was property called in to be exchanged
72 for stock in the new company—the M., I. & N.

The Supreme Court of the United States has repeatedly held that where one railroad which is exempt from taxation consolidates with another not exempt that the right of exemption can only be passed to the new and consolidated company so as to exempt that part of the road in the hands of the new company which was owned and held by this company which was exempt before the consolidation. This is held to be the case, although the laws under which the consolidations were made provided that the new company should have all the rights, privileges, and immunities of the old companies. P. & W. R. R. Co. *vs.* Maryland, 10 Howard, 376; Tomlinson *vs.* Branch, 15 Wallace, 460; Delaware R. R. tax case, 18 Wallace, 206; Central R. R. Co. *vs.* Georgia, 92 U. S., 665.

In such cases the right of exemption from taxation will not be held to pass and vest in the consolidated company in favor of after-acquired property unless the intention of the legislature is so plainly shown in the language of the law consenting to such consolidation to be in favor of the proposition that the right of the State to tax the new road has been yielded up to the exclusion of every reasonable doubt.

In the case of Morgan *vs.* Louisiana, 93 U. S., at page 222, Judge Field says: "As has often been said by the court, the whole community is interested in retaining the power of taxation undiminished, and has the right to insist that its abandonment shall not be presumed in any case where the deliberate purpose of the State to abandon it does not appear."

Judge Waite says in Rail Co. *vs.* Commissioners, 103 U. S., at page 3: "Grants of immunity from taxation are not presumed. On the contrary, all presumptions are the other way, and unless an exemption is clearly established all property must bear its just share of the burdens of taxation."

That court has always ruled with great strictness in favor
73 of the right of the State to tax in such cases, and similar remarks by it could be quoted without number. Therefore I hold that no right of exemption passed from the A. & N. C. road so as to benefit property which the M., I. & N. thereafter acquired in Scotland county.

This view is supported by Wagner *vs.* Mety, 69 Mo., page 150.

If the A. & N. C. road had been running through Scotland Co. before the consolidation the case might have been different. But that company never built a foot of road and never owned an inch of real estate in this county or elsewhere, so far as I am advised.

But because the supreme court of this State in Scotland Co., case 65 Mo., page 123, decided against the county in an action for taxes an impression has prevailed that this company is not taxable. But the questions decided by the Supreme Court of the United States in the first four cases I have cited do not appear to have been brought to the attention of the court in the Scotland Co. case. The effect of the consolidation on after-acquired property is not mentioned in the opinion nor does the court say one word as to whether or not the legislature of Missouri in the act which permitted this consolidation had consented for the right of exemption to pass to the new company. But the great jurist who wrote the opinion in that case does say that it was conceded there that the M., I. & N. Co. succeeded to all the privileges of the A. & N. C. road. In view of this concession the court in that case could not have decided otherwise than against the county. The cause was being heard in a court that determines issues only on exceptions.

Since exemption from taxation was a privilege of the A. & N. C. road it was conceded that the M., I. & N. succeeded to all the privileges of that road; as a matter of course it would have succeeded to the privilege of exemption from taxation.

No court could now take the position that the legislature could have taken the right of exemption away from the A. & N. C. Co. The Constitution of the United States would forbid this.

Now, the legislature had the clear right to prescribe the
74 terms on which railroad companies should consolidate. A proviso to the act under which this consolidation was made says that if a railroad of another State shall lease a railroad the whole or part of which is in this State, or make arrangements for operating the same as "provided in this act," or shall extend its road in this State, then, in such case, such part of said railroad as — in this State shall be subject to taxation.

The Missouri supreme court in State *ex rel.* C., B. & K. C. R. R. Co., 89 Mo., page 523, says this proviso above quoted applies to a purchase of a road in this State by a non-resident road under a foreclosure proceeding, and further says it is broad enough to cover all those cases where the company of another State is al-ow-d to make arrangements for the operation of the road in this State whether by lease, purchase, or otherwise. This decision was not only affirmed by the Supreme Court of the United States, to which court the Sullivan and Putnam county cases were carried, but the language there

used is, if anything, more emphatic and direct, and for fear any point might be left undecided that court took the matter under advisement the second time and there more fully considered the State's right to tax. Since consolidation is provided for in the act, why not hold, then, that the proviso in reference to taxation will cover a case where a railroad of another State has consolidated with one in this State and built thereafter its railroad into this State? It may throw some light upon the question to quote again from the opinion in the case last cited while in discussion of this act of the legislature and this proviso.

The court says: "The manifest policy was to get legislative control of all railroad corporations."

This decision reannounces the doctrine, so well settled, that exemption from taxation is a personal privilege to the corporation or person to which it is given, incapable of transfer, unless there is express statutory authority therefor. It says franchises are
75 positive rights or privileges, without which the road of the company could not be successfully worked, and that immunity from taxation is not one of them. A Federal question is presented in this case because it is insisted that the laws of this State, passed subsequent to the charter of the A. & B. road in 1857, making all railroad property taxable are unconstitutional in so far as this defendant is here concerned.

It would be the duty of this court to follow the U. S. Supreme Court, therefore, in passing on such question. I think the rulings of that court are clearly in favor of the const-utional right of the county of Scotland to collect this tax; furthermore, I think the cases of Wagner *vs.* Mety, State *vs.* C., B. & K. C. R. R. Co. by implication overrule the Scotland Co. case. Cooley on Taxation, page 146, says: "The intention to exempt must in any case be expressed in clear and unambiguous terms. All exemptions are to be strictly construed." They embraced only what is within these terms, subjecting the act of consolidation in question to this test, and in the light of the case in the eighty-ninth Missouri report I am of the opinion that the judgment should be for the plaintiff.

STATE OF MISSOURI, }
County of Scotland, } *ss:*

I, C. F. Sanders, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the foregoing is a true copy of the judgment rendered and the written opinion of the court filed in the cause of the State of Missouri at the relation and to the use of William H. Wine, collector of the revenue within and for the county of Scotland, State of Missouri, plaintiff, against the Keokuk and Western Railroad Company, defendant, as the same appears of record and on file in my office.

76 Witness my hand as clerk and the seal of said court, at office, in Memphis, Missouri, this Jan'y 28, 1889.

[L. S.] C. F. SANDERS,
Clerk Circuit Court,
By CHAS. L. MOORE,
Dep'y Clerk.

(Endorsed :) Filed Jan'y 31, 1889. Geo. C. Moore, clerk.

EXHIBIT C.

OFFICE OF THE M., I. & N. R'W'Y CO.,
CENTERVILLE, IOWA, *Oct.* 2, 1871.

The board met pursuant to call of the president.

Present: F. M. Drake, president; James Fitz Henry, vice-president; Wm. Bradley, J. A. Breazelee, Joe Rummel, W. F. Vermidin, A. Hopp, J. A. Talbott, & C. W. Bowen, sec'y.

On motion of W. F. Vermidin, it was resolved that for the purpose of economy in constructions and shortening the distance from Alexandria, Missouri, to Centerville, Iowa, the line of the Missouri, Iowa and Nebraska railway be permanently located from Alexandria to Centervilie via Memphis, in Scotland county, and Lancaster, in Schuyler county, Missouri.

On motion of Joe Rummel, Henry Hill, of Warsaw, Illinois, was unanimously elected superintendent of the M., I. & N. R'w'y Company for the remainder of the current year.

On motion, board adjourned.

C. W. BOWEN, *Sec'y.*
F. M. DRAKE, *Pres't.*

Mr. E. P. Buell made a proposition to the board to enter into a contract with this company to finish grading, tieing, and bridging its railroad from Alexandria to Iowa State line, which prop-
77 osition was taken under advis-ment by the board, and, after due deliberation therein, it was, on motion—

Ordered that the said proposition be, and the same is hereby, accepted by this board, and that a contract in accordance with said proposition be made by this company as follows, namely: This agreement, made and entered into this — day of August, 1868, by and between E. Pratt Buell, for himself and associates in the iron contract of the first part, and the Alexandria and Nebraska City Railroad Company, a corporation in the State of Missouri, party of the second part, witnesseth: That the said party of the first part agrees to do all the earth work and bridging and furnish all the cross-ties necessary to complete the road-bed of the said parties of the second part's railroad from the city of Alexandria, in the State of Missouri, to the intersection with the Iowa Southern railway at the line of the States of Missouri and Iowa, near Upton, Missouri, as the said railroad is now located and surveyed by said company, party of the second part.

All of the above-mentioned work to be finished in accordance with the specifications contained in a certain contract for iron and equipment of said railroad between E. Pratt Buell and others and said railroad company, dated on the second day of January, 1868.

And it is further mutually agreed by and between the parties hereto that the engineering necessary to complete said work shall be furnished and paid for by the said parties of the first part, with the full understanding and agreement that the grades, curves, fills,

plans, profiles, & specifications now adopted, fixed, made, and on file in the office of said railroad company shall not in any wise be changed or altered without the consent in writing of the president of said railroad company to the said parties of the first part, and the said parties of the first part shall commence the work on said railroad within twenty days after they shall have notice from the president of said railroad company; that the said party of
78 the second part have the collaterals as per agreement hereinafter contained in their hands or in the hands of an agent agreed upon by both parties hereto, and shall fully complete the said work as fast as the track-layers shall require the same to be done to lay the track upon, and in that respect save the said railroad company harmless from all damages that may be demanded of said railroad by the company having the contract to iron and equip said railroad.

The party of the second part agrees to deposit to the credit of the party of the first part seventy-five thousand dollars ($75,000) in seven per cent. bonds of the county of Clark, in the State of Missouri, the bonds to be the same bonds issued by the county court of said county of Clark on the — day of August, 1868, to the Alexandria and Nebraska City Railroad Company, and also deposit in the hands of P. A. Hett, of Alexandria, ten thousand dollars in conditional notes and six thousand dollars ($6,000) in private subscriptions now belonging to the said railroad company, and also within sixty days from the date of this contract to make a further deposit of twenty-five thousand dollars in good solvent notes in the hands of said P. A. Hitt, making in all seventy-five thousand dollars in bonds and forty-one thousand dollars in notes & subscriptions, amounting in the sum total to one hundred and sixteen thousand dollars; and the said party of the second part also further agrees to assist the party of the first part in obtaining from the city of Warsaw, in the State of Illinois, an additional subscription of ten thousand dollars, which, when obtained, is to belong to and be paid to the party of the first part in addition to the said payments above mentionod in payment of said work, making in all one hundred and twenty-six thousand dollars ($126,000).

The above kinds of pay to be made to the party of the first part in the following manner, to wit: The private subscriptions and conditional notes shall be paid to the party of the first part as the same become due on the completion of the said road from
79 point to point, as mentioned in said notes and subscriptions, or otherwise as the president of said railroad company may elect and decide, and which will be best for all parties in forwarding the work; and whenever the iron shall be laid and cars run from the said city of Alexandria to the west line of said Clark county the president of said railroad company shall within ten days thereafter give to the party of the first part an order on James Fitzhenry, of said city of Alexandria, the agent of said county of Clark, for the sum of seventy five thousand dollars ($75,000) in the said Clark county bonds, being the same bonds which are or are to be

deposited with the said agent of said county court for the said railroad company.

And it is further understood and agreed that the party of the second part shall within ten days from the date of this contract pay, satisfy, and discharge all debts, dues, and demands now owing by the said railroad company to contractors, individuals, or otherwise, and settle, close up, and dismiss and cause to be cancelled all former contracts in such manner that no proceeding or action for damages or judgments can in any way hinder, retard, or prevent the party of the first part from prosecuting the work under this contract in any form whatever; and it is further understood and agreed that the party of the second part shall within thirty days from this date, at their own expense, procure all the right of way over all lands occupied by the said railroad company throughout the entire length of their said railroad, and to have all deeds and instruments of relinquishment properly executed and recorded in Clark and Scotland counties, in the said State of Missouri.

And it is further understood and agreed that all the timber on about one hundred acres of land, which timber no- belongs to the said party of the second part, and all donations of timber that may hereafter be made to said party of the second part shall be and become the property of the said party of the first part from this date,
to be used by the said party of the first part as they may deem
80 proper for ties, bridges, or other purposes in the construction
of said railroad; and it is further agreed that the entire amount of bonds, notes, and subscriptions above mentioned to the amount of one hundred and twenty-six thousand dollars ($126,000) shall be used in payment under this contract as herein stipulated and agreed and for no other purpose whatever.

In witness whereof the said parties, The Alexandria and Nebraska City Railroad Company, party of the second part, signing by their president and treasurer, duly authorized by resolution of the board of directors of said company to sign and execute the same for and on behalf of said company, and sealed with its corporate seal, have hereunto interchangeably set their hands and seals the day and year first above written; and, on motion, it was further ordered that the president and treasurer of this company be, and they are hereby, authorized and directed to sign and execute the said contract for and in behalf of this company, and that the corporate seal of this company be duly affixed to said contract and attested by the secretary.

On motion, the board adjourned to meet on call of the president.

E. SACKETT, *President*,
P. W. PLANTZ, *Secretary*,
By E. PRATT BUELL.

In pursuance of resolution of the board of directors passed at meeting held April 26, 1870, see minutes, page 168—

The secretary called the attention of the board to the fact that E. Sacket, deceased, late president of this company, had omitted to sign his name to the minutes or records of several meetings of this

board as which he presided as president, &c.; whereupon it was, on motion of J. M. Ochiltree, resolved that E. Pratt Buell, president of this company, be, and he is hereby, empowered, authorized, and requested to sign the name of the said E. Sackett officially to the said minutes & records so omitted to be signed by him officially as aforesaid.

I agree that the foregoing nine pages above & before written are true copies of records.

81 STATE OF MISSOURI, } ss:
County of Scotland, }

John C. Moore, of lawful age, being duly sworn, states that the foregoing pages are true copies, the first page from the railroad records of the Missouri, Iowa and Nebraska Compan*ie*'s book and the remaining from the book of the Alexandria and Nebraska City Company.

JOHN C. MOORE.

Subscribed and sworn to before me this Jan'y 30, 1889.
[L. S.] C. F. SANDERS,
Circuit Clerk,
By CHAS. L. MOORE, *D. C.*

Keokuk & Western railroad; office of Felix T. Hughes, president and general counsel.

KEOKUK, IOWA, *Jan'y* 29, 1889.

John C. Moore, Esq., Memphis, Mo.

DEAR SIR: Enclose you the copies called for in yours of yesterday. I shall make no objections to your introducing these papers upon your attaching an affidavit to their correctness, provided we can agree all round to submit on such affidavits as either party may offer. I do not think I shall want more than two or three, possibly none, in the injunction case; can, of course, tell better after seeing your answer.

I wrote what you say in the card of to-day; think your conclusions are wise.

Truly yours, F. T. HUGHES.

I, C. F. Sanders, clerk of the circuit court of Scotland county, Missouri, and *ex officio* recorder, hereby certify that I am custodian of the records of deeds of said county; that they are now
82 in my possession intact, and that they do not disclose any deed for real estate or right of way from any person or persons, nor any grant or grants of lands from the Government of the United States, from the State of Missouri, from Scotland county, nor conveyances of any kind from any corporation, company, or individual to the Alexandria and Bloomfield Railroad Company or to the Alexandria and Nebraska City Railroad Company to any lands situated in said county, but that said records do disclose numerous deeds, all bearing date later than May 3d, 1870, from many different

persons to lands for right of way in said county to the Missouri, Iowa and Nebraska Railway Company, and all such deeds show that they are made to lands upon which the Keokuk and Western Railroad Company now has its railroad in operation, and which railroad was built by the Missouri, Iowa and Nebraska Railroad Company. This I certify to after having made personal examination of the said records.

[L. S.] C. F. SANDERS,
Circuit Clerk.

Filed Jan'y 31, 1889.

GEO. C. MOORE, *Clerk.*

(Said answer and exhibits thereto attached are endorsed as follows:)

No. 19. The Keokuk & Western R. R. Co., complainant, *vs.* The County Court of Scotland County *et al.* Answer of County Court of Scotland County, R. M. Thompson, Jos. E. Billups, W. W. Buford, and Joel Ewing, and Exhibits "A," "B," & "C." Filed Jan'y 31, 1889. Geo. C. Moore, clerk.

83 Afterwards, to wit, on the 16th day of February, 1889, the following proceedings were had and appear of record, to wit:

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
COUNTY COURT OF SCOTLAND COUNTY *et al.*, Defendants. } 19.

At this day come defendants County Court of Scotland County, Missouri; Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing, by John C. Moore, their solicitor, and file two briefs in duplicate in said cause.

Afterwards, to wit, on rule day, Monday, March 4th, 1889, the following proceedings were had and appear of record, to wit:

KEOKUK & WESTERN R. R. Co., Complainant,
vs.
SCOTLAND COUNTY COURT *et al.*, Defendants, } 19.

Now, at this day, come the defendants The County Court of Clark County, Missouri; J. E. Todd, Mike Seyb, George Harter, and J. H. Million, by their solicitor, T. L. Montgomery, and Anderson & Schofield, of counsel, and file seperate answer to complainant's amended and substituted bill.

Which said separate answer of The County Court of Clark County and the endorsements thereon *is* in words and figures, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri, Northern Division.

THE KEOKUK AND WESTERN RAILROAD COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; ROBERT M. THOMPSON *et al.*, Defendants.

The answer of The County Court of Clark County, Missouri; J. E. Todd, Mike Seyb, George Harter, and J. H. Million to the bill of complaint and amended bill of The Keokuk and Western Railroad Company, complainant.

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These defendants, now and at all times hereafter, saving and reserving unto themselves all the benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defendants are advised is or are material and necessary for them to make answer unto, these defendants, answering, say:

These defendants deny that the Missouri, Iowa and Nebraska Railway Company succeeded to and became vested with all the rights, franchises, privileges, immunities, property, and exemptions belonging to or in any way appertaining to the said Alexandria and Bloomfield Railroad Company.

And these defendants more particularly aver that the said Missouri, Iowa and Nebraska Railway Company did not succeed to or become vested with the exemption (if any) of the stock of the said Alexandria and Bloomfield Railroad Company from taxation.

The railroad of the Alexandria & Bloomfield Railroad Company never was completed, and the railway of the Missouri, Iowa and Nebraska Railway Company was never completed. The railway property of the Missouri, Iowa and Nebraska Railway Company was always liable to taxation. The circuit court of Scotland county, Missouri, in the suit of Scotland County against The Missouri, Iowa and Nebraska Railway Company, mentioned in the bill, did not hold, decide, adjudge, or determine that section 9 of the charter of the Alexandria and Bloomfield Railroad Company exempted the property of the said Missouri, Iowa and Nebraska railway from all taxation, whether State, county, municipal, or otherwise, for the period of twenty years after the completion of said railway. It only adjudged and determined that the said railway company was not liable for the taxes sued for in that suit, and nothing more. These defendants were not in any manner parties to the said suit or bound by or affected by the judgment therein. The United States circuit court for the eastern district of Missouri, in the suit of James Secor and other stockholders of the Missouri, Iowa and Nebraska Railway Company against the said railway company and the county courts, the judges thereof, and the collectors of the revenue of the counties of Clark, Scotland, and Schuyler, did not hold, determine, or adjudicate that the charter of *of* the Alexandria

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and Bloomfield Railroad Company exempted the property of the Missouri, Iowa and Nebraska Railway Company from taxes for the period of twenty years after the completion of the railroad. No such question was presented by the pleadings or adjudged or determined by the court. The only matter presented by the pleadings and adjudicated by the court was the liability of said company for the taxes of years prior to the year 1882.

But if it be true that this court did, in said suit of James Secor and others against said railway company and others, so adjudge and did enjoin and restrain the said county courts, the judges thereof, and collectors of revenue of said counties and their several and respective successors in office from levying or attempting to levy, collect or in any manner attempting to collect, from the said railway company any taxes whatever until the expiration limited in the charter of said railway company, to wit, December 1st, 1892, and if such injunction be, as is claimed by complainant, still in force and virtue in favor of complainant herein as successor to and privy of the said railway company, then these defendants submit to the court that the complainant ought not in equity and good conscience to be permitted to have and maintain this suit for the same relief, to the great annoyance, vexation, cost, and expense of these defendants.

These defendants did not and have not in any manner or at any time wrongfully contrived to injure the said railway company. The county court of Clark county did not levy or pretend to levy
86 or have not levied any taxes upon the said railway property for the years 1883 and 1884. The said county court of Clark county did, as by law it well might and in all respects in compliance with the laws of the State of Missouri, all the necessary and proper preliminary proceedings having been duly and legally taken, levy upon the said railway property taxes for the years 1885, 1886, and 1887, and caused the same to be duly and properly extended upon the tax books and duly delivered the same to the collector of the revenue of said county for collection of said taxes, exclusive of penalties, interest, or costs, amounting respectively to the following sums, to wit: For the year 1885, $3,002.70; for the year 1886, $2,569.20; for the year 1887, $2,949.84, and no more.

These defendants admit that the railway company mortgaged its property in the year 1870, as stated in the bill herein, and that, said railway company having made default in the year 1879, foreclosure proceedings were begun and a decree and supplemental decree of foreclosure made, and sale made of the property to Jesup and Thacher, and said sale confirmed, and conveyance made to said Jesup and Thacher and by them to complainant herein, all as stated in the bill herein.

The conveyance to the said Jesup and Thacher was made about the first day of October, 1886, and the conveyance by them to the complainant was made upon the 26th day of November, 1886.

These defendants also admit that possession of said property was delivered up to complainant about December 3, 1886, and that complainant since said conveyance has been the owner of said property.

The Wabash, St. Louis and Pacific Railway Company was a party to the said foreclosure suit, and its interest in the said property passed by said conveyance to the complainant.

The complainant did not take the said property free from taxes levied thereon as aforesaid, but, on the contrary, took same subject thereto.

87 The collector of Clark county is not and was not at the time of filing the bill threatening and does not and did not then intend to seize or interfere with the property of the complainant for said taxes or any of them.

The defendants do not and did not at the time of filing said bill contemplate or intend taking any steps of any kind for the collection of the taxes aforesaid levied upon the said property in Clark county as aforesaid until the litigation now pending between the State of Missouri and the complainant, involving the liability of the said property to taxation for the years aforesaid, shall have been determined.

These defendants in all that they have done in the premises are simply acting as officers of the State of Missouri in its behalf and for its benefit and have no personal interest of any kind in any of the matters or things set up in the said complainant's bill of complaint, and they submit to the court that the State of Missouri is the real party against whom the bill of complaint in this suit is brought, and that this court ought not to entertain or proceed further in this suit and has not jurisdiction of the same.

The said Missouri, Iowa and Nebraska Railway Company has ever since the 30th day of December, 1879, been utterly insolvent and unable to pay its debts.

February 12th, 1880, the said railway company made and entered into a contract with a committee of its bondholders and the Wabash, St. Louis and Pacific Railway Company—a true copy is hereto attached, marked Exhibit "A," and made a part hereof as fully as if set forth at large herein—whereby, among other things, it agreed to lease its railway property to the said Wabash, St. Louis and Pacific Railway Company; afterwards, September 3, 1880, it did, in pursuance to said contract, lease its entire railway and property for the term of nin-ty-nine years, renewable forever, to the said Wabash,

88 St. Louis and Pacific Railway Company (a true copy of which lease is *is* hereto attached and marked Exhibit "B" and made a part hereof), and thereupon all of the property involved in this suit and mentioned and described in the bill of complaint herein was delivered by the Missouri, Iowa and Nebraska Railway Company to the said Wabash, St. Louis and Pacific Railway Company, and since that time the said property has never been owned or possessed by the Missouri, Iowa and Nebraska Railway Company, and same has not since that time been its property, and the same has ever since said time — subject to taxation.

These defendants are not in any manner concerned in the allegation of said bill so far as the same affects the territory of Scotland and Schuyler counties or the persons of the other defendants, and the other defendants have no interest in this case or the de-

termination thereof so far as Clark county and these defendants are concerned.

None of the property aforesaid was ever the property of the Alexandria and Bloomfield Railroad Company. The ninth section of the charter of the Alexandria and Bloomfield Railroad Company was duly repealed by the legislature of the State of Missouri February 27th, 1875.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge and belief of the defendants.

These defendants deny that they are doing the acts and things complained of by the plaintiff in the levying and collection of taxes claimed to be due from the plaintiff, deny that they have any personal interest or are the real parties in interest; but, on the contrary, they aver and maintain that in all acts done or at-
89 tempted to be done by them they did as public officers and agents of the State of Missouri, and such acts done and attempted to be done were the acts of the said State of Missouri by them as public officers and agents, and they submit to the court that the State of Missouri is the real and only defendant and party in interest in this cause against whom this bill of complaint is brought, and the said State of Missouri by these defendants humbly protesting against *against* the jurisdiction of this honorable court, and, by further answering, now waiving such protest to the jurisdiction that this court has no jurisdiction to and ought not to entertain or proceed in this suit.

Defendants admit and they aver and claim—

That said property in controversy was by the Missouri, Iowa and Nebraska Railway Company leased to the Wabash, St. Louis and Pacific Railway Company, and that therefore the same became and was from the date of said lease, to wit, about the 1st day of September, 1880, taxable because of said lease, and that the said Wabash, St. Louis and Pacific Railway Company thereupon became the sole and absolute owner of the said property, franchises, and privileges.

They admit that the Wabash, St. Louis and Pacific Railway Company is a Missouri corporation, and that the lease as entered into was authorized.

And they aver that the effect and purpose of said lease was to transfer to the said Wabash, St. Louis and Pacific railway the title to the property therein described, and from and after the execution and delivery of said lease the property therein described became and was liable to taxation for State, county, and municipal purposes.

That as to the proceedings in the United States circuit court in and for the eastern district of Missouri wherein The Wabash, St.

Louis and Pacific Railway and The Missouri, Iowa and Nebraska Railway were parties, defendants aver that they were not parties or privies to such proceedings, nor were they bound by the adjudication or rulings made in said cause, and defendants deny
90 that there were any proceedings had in said cause by which the property now in the hands of the complainant was exempt from taxation, or that any exemption that might have accrued to the Missouri, Iowa and Nebraska Railway Company was continued or perpetuated to the property while in possession of the Wabash, St. Louis and Pacific Railway Company, or after sale to complainant or otherwise as now claimed by complainant.

Defendants admit that they claim and do hereby aver—

That none of the property referred to and claimed by defendant was ever owned by the Alexandria and Bloomfield Railroad Company, and they do aver and claim that the said charter of said Alexandria and Bloomfield railroad was duly repealed by the legislature of the State of Missouri on the 27th day of February, 1875, and that ever since that date said property has been subject to taxation.

And defendants aver that they were not parties or privies to the case of Scotland County against The Missouri, Iowa and Nebraska Railway, or Secor against Singleton, referred to in amended bill of complaint; deny that they are bound by the judgments or proceedings in said causes, and aver that in last-mentioned cause the said court never had or possessed jurisdiction to hear, try, or determine the same; and deny that as to the parties to this cause the proceedings had in said causes are *res adjudicata*; and deny that the Keokuk and Western Railroad Company is entitled to any exemption from taxation by virtue of the judgments, decrees, or proceedings had in said cause.

The complainant ought not to have or maintain this action against these defendants because the complainant had before the commencement of this action fully submitted its said pretended claim to exemption from taxation by the authority of the State of Missouri to the adjudication of the circuit court of Scotland county, Missouri, and to the U. S. circuit court for the S. district of Iowa, in the causes mentioned in the complainant's amendment to the bill of complaint; that said court acquired full jurisdiction, and
91 that the judgment by said Scotland county circuit court, although appealed from, is still valid and of binding force against the complainant herein, against whom the invalidity of said pretended exemption was fully adjudged and determined, and that the other said cause is still pending in said U. S. circuit court at Keokuk.

At the commencement of this suit the collector of revenue of Clark county had not threatened nor had he any purpose of seizing on the property of complainant or of bringing suits for the said taxes; on the contrary thereof, in order to avoid multiplying suits against said complainant, said collector was waiting final determination of said suits at the time of filing the original bill herein; aver that this proceeding was and is wholly unnecessary to prevent multiplicity of suits.

All of which matters and things these defendants are willing and ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

T. L. MONTGOMERY,
Solicitor for said Defendants.

ANDERSON & SCHOFILED, *Of Counsel.*

STATE OF MISSOURI, } ss :
County of Clark, }

We, J. E. Todd, Charles Seyb, George Harter, and J. H. Million, being duly sworn, do depose and say that we are the defendants named in the foregoing answer; that we have read over the same and the same is true.

J. E. TODD.
CHAR. SEYB.
GEO. H. HARTER.
J. H. MILLION.

92 Subscribed to before me this 2nd day of February, 1889.
[L. S.] D. E. KENNEDY,
Notary Public.

My commission expires Dec. 21, 1892.

EXHIBIT "A."

This agreement, made at the city of New York, February 12th, A. D. 1880, by and between the Missouri, Iowa and Nebraska Railway Company, party of the first part; H. C. Thacher, Henry Hill, and George Opdyke, a committee of bondholders of said Missouri, Iowa and Nebraska Railway Company, joint parties of the second part, and the Wabash, St. Louis and Pacific Railway Company, party of the third part, witnesseth:

I.

The first party hereby covenants—

First. It will complete or cause to be completed with all reasonable dispatch a prolongation of its existing line of railroad from Corydon, Iowa, to a junction with the main line of said third party, either in Page county, Iowa, or in Nodaway, or in Atchison county, Missouri, the same to be completed as a first-class railroad, with no grades inclining downward to the west more than sixty feet to the mile, with iron rails of best quality, fifty-six pounds to the yard, with depots, sidings, and other suitable appurtenances; and said first party shall also increase its present equipment in proportion to its increased mileage (a schedule of present equipment is hereto attached): Provided, however, that the third party hereto may be required that steel rails of fifty-two pounds to the yard shall be substituted for the iron rails above referred to upon said extension from

about thirty miles west of Corydon, Iowa, to the junction aforesaid; but in that case said third party shall be bound to pay
93 the cost of said steel rails over and above sixty dollars per ton, delivered at New York or at the mill if purchased in the United States; and it is further provided that the portion of said railroads hereafter to be constructed shall be regarded as complete whenever the tracks, sidings, building-, and other appurtenances are the same in character as upon that part of said railroad between Corydon and Keokuk and of equal amount in proportion to the distance.

Second. On or before the completion of the aforesaid extension of its road, as the first party hereto may elect, it will procure, if it can, the assent of its directors and shareholders, as required by law, to the consolidation of its capital stock, property, and franchises with the capital stock, property, and franchises of said third party upon such terms that five thousand dollars of preferred stock of said third party and five thousand dollars of common stock of said third party, both, for each mile of the completed road of said first party extending from Keokuk, Iowa, to Corydon, Iowa, and for each mile of the thirty miles from Corydon westward now under contract, shall be issued in exchange *pro rata* for the capital stock of said first party now issued and to be issued in part payment for construction of said last-named thirty miles, and that preferred and common stock of said third party to the amount of five thousand dollars each per mile shall be issued in part payment for the construction of the prolongation of said first party's railroad from a point thirty miles west of Corydon, Iowa, to the point of junction with the present main line of said third party, as hereinafter more fully set forth.

Third. Said first party will also, as one of the terms of such consolidation and a primary condition of this agreement on its part to be performed, cause all of the holders of its outstanding bonds, themselves or by duly constituted agents or trustees, to enter into covenant for the surrender and cancellation of the same upon receiving in exchange thereof bonds of said third party secured
94 by first mortgage upon the entire line of railroad of said first party from Keokuk, Iowa, to the junction aforesaid, and bearing interest at the rate of six per cent. per annum, payable semi-annually, in gold coin or its equivalent, in the city of New York, and issued to an amount not greater than fifteen thousand dollars, par value, per mile of completed road and preferred stock of said third party, as hereinafter provided.

Fourth. It is, however, expressly understood and agreed that said first party, in contracting for the constructing of the aforesaid extension of its line, may agree to deliver in payment for such construction first-mortgage bonds of said third party of the series described in the foregoing clause to the amount of fifteen thousand dollars per mile, the same as in said clause it is provided shall be issued upon each mile of said railroad already complete.

Fifth. In case the first and third parties hereto shall agree that the railroad of the first party shall be transferred to said third party before the same is completed to a junction with the main line as

aforesaid, then said first-mortgage bonds and preferred and common stock shall be issued and delivered as often as five miles or more of said railroad directly connected with the said completed road shall be finished.

Sixth. Said first party will also, as one of the terms of such consolidation on its part to be performed, fully secure and indemnify said third party against all other indebtedness of said first party, so that the railroad of said first party shall be transferred to said third party free from any lien or indebtedness other than that of the mortgage bonds above referred to, and excepting also its obligations by way of lease.

Seventh. In the event that said first party shall for any reason be unable to secure the requisite consent of its directors and shareholders to such consolidation, then this agreement shall bind said first party to lease its railroad and equipment, completed
95 to said junction, and increase as aforesaid, in perpetuity, upon consolidation that said party shall fully maintain and operate the same and shall guarantee and pay interest at six per cent. on the bonds of said first party, secured by said first mortgage on its entire line of railroad from Keokuk to its intersection with the main line of said third party, and issued at the rate of fifteen thousand dollars per mile of completed road, and shall, as further rental, pay interest upon a first series of income bonds to be issued by first party to the amount of five thousand dollars per mile of completed road, interest in each year at a rate equal to the dividends paid in that year on the preferred stock of said third party, and shall, as a further rental, pay upon a series of oncome bonds to be issued by said first party — the amount of five thousand dollars per mile interest at the same rate as the dividends paid in that year on the common stock of said third party.

Eighth. If the transfer of the railroad of the said first party to said third party as above shall be by lease and not by consolidation, then said first party shall be bound to all of the covenants above set forth with regard to its indebtedness and the completion and increase of its road the same as if the consequent requisite to consolidation were secured.

Ninth. In the event of consolidation so much of the perferred stock of said third party given in exchange for the common stock of said first party as above provided, or in the event of lease so much of the first series of income bonds of said first party as shall be equal to five thousand dollars per mile, or so much of said first party's railroad as extends from Keokuk to a point thirty miles west of Corydon, shall be by first party given and paid to the holders of the present outstanding mortgage bonds of said first party in severalty and due proportion to each of said holders who shall surrender his bonds and accept in lieu thereof new bonds of tenor and amount hereinbefore provided.

96 II.

The parties of the second part, not individually but as a committee holding a large majority of the present outstanding bonds of said

first party, deposited with them under an agreement of said bondholders dated December 1st, 1879, and an agreement supplemental thereto of the same date, and to the extent only of their powers under said agreement or as hereafter enlarged by any of the holders of said bonds, do covenant as follows:

First. Upon the transfer by consolidation or lease, as above provided, of the railroad of said first party to said third party, said second party will surrender all of the present outstanding bonds of said party which it now holds in trust or may hold or receive in lieu thereof new bonds and preferred stock or income bonds, as set forth in the foregoing clauses, it being mutually understood and agreed that the present outstanding bonds of said first party have not been and shall not be issued to a greater amount than twenty thousand dollars per mile of completed road, and that in no event shall said third parties be asked to receive less than three of said new bonds in exchange for four bonds of the series now outstanding.

Second. In the event that so many holders of present outstanding bonds shall refuse their sanction to this agreement that it shall be necessary to foreclose the mortgage whereby they are secured, the second parties will, whenever said railroad and equipment may be offered at judicial sale, bid such sum as is necessary to buy in the same, provided that such sum is not, except at the option of said second parties, to be in excess of eighty per cent. of the par value of said present outstanding bonds.

Third. In the event that a judicial sale of said railroad and equipment to said second parties shall be duly confirmed, then said second parties will convey to said third party the interest acquired at such sale by deed outright or through incorporation of the purchasers and subsequent consolidation or lease, as counsel for third party may advise, receiving in payment therefor the bonds
97 and stock of said third party the same as said first party would have received if the transfer to said third party had been effected without foreclosure.

Fourth. Provided that the above covenant to bid shall become operative only if the holders of the common stock of said first party, or else said third party or persons authorized by it, shall, at least one day before said sale, pay or secure to be paid to said second parties whatever amount may by the court ordering such sale be required to be paid in cash, and such further amount as may be needed to make up the dividend payable to holders of bonds not represented by said second party out of the proceeds of such sale if the sale shall be at the full amount of eighty per cent. upon the par value of the present outstanding bonds.

Fifth. The right to pay or secure to be paid to the said committee the amount last named shall be exclusively in the holders of the common stock of said first party, who may unite in so doing from the entry of the decree of the sale until twenty days before such sale; after that for ten days exclusively with the holders of bonds represented by said committee or such of them as may unite in so doing, and after that until such sale exclusively with said third

party or persons it may appoint for that purpose. Whichever of said parties shall pay in said amount shall be entitled to receive new bonds and stock to which the holders of unrepresented bonds would otherwise have been entitled, and also to share in an amount of common stock of said third party to which said second parties may become entitled, as provided in the seventh clause of said second party's covenants herein.

Sixth. The second party moreover reserves to itself the option, in the event it shall become the purchaser at judicial sale of said railroad and property,— complete said railroad to a junction with the main line of said third party, and further equip the same, as above provided by said first party to be done; and if said second party shall, within thirty days from the confirmation of said sale, declare
98 its purpose so to do, then said third party shall be bound to pay said second party for completing said railroad and equipments in bonds and stock the same said first party would have been entitled to receive if it had fulfilled its covenants herein.

Seventh. The common stock of said third party, however, which said second party shall in that case be entitled to retain shall be five thousand dollars per mile for that portion only of said railroad between a point thirty miles west of Corydon, Iowa, and the intersection with the main line of said third party, and the remainder of said common stock of said third party, to wit, five thousand dollars per mile between a point thirty miles west of Corydon and Keokuk, shall go to the party advancing funds to said second party, as provided in the fourth and fifth clauses of the covenants of said second party herein.

III.

In consideration of the foregoing the third party covenants as follows:

First. Upon the completion of the railroad and increase of equipment of said first party to a junction with the main line of said third party, either by said first party or by said second party, as above provided, said third party will endeavor to procure the requisite consent of its directors and stockholders to a consolidation with said first party upon the terms and conditions above mentioned, and will do its part in effecting and carrying out the same.

Second. Failing to obtain such consent, said third party will, upon completion of said railroad and increase of equipment by either said first party or said second party, as above provided, accept a lease thereof upon the terms and condition above specified, and will do its part in effecting and carrying out the same.

Third. Said third party, moreover, reserves to itself the option, in the case said railroad shall be bought in at a judicial sale
99 by said second party, and said second party shall not, within thirty days after confirmation of said sale, declare its purpose to complete said road, or shall not, within ninety days from such declaration, enter into a responsible contract for the speedy completion of the same—in that case said party may elect to receive an immediate transfer to itself of said railroad and equipment

by consolidation or lease and itself to provide for completion of the same and to issue and award in payment therefor the bonds and stock which said second party would for the same work have been entitled to receive.

IV.

First. All the parties hereto desiring to afford to each and every holder of the present outstanding bonds of said first party opportunity for a full participation in the benefits of this agreement as any holder of said bonds shall enjoy, it is mutually agreed that holders of said bonds shall be admitted to subscribe and become parties to this agreement, as represented by the second parties hereto, at any time prior to the taking effect of the consolidation of said first party with said third party or lease from said first party to said third party, or, if foreclosure intervene, at any time before the entry of such decree.

Second. It is expressly understood and agreed by all the parties hereto that each and all of the covenants made by any of the parties hereto and all contracts made with any of said parties in pursuance of this agreement may be enforced by either of the other parties hereto, the same as if made directly and solely with such other party.

In witness whereof the individual parties above named have hereunto set their hands and seals and the corporations above named have caused their several signatures and seals to be affixed hereto and attested by their respective secretaries the day and year above named.

100 MISSOURI, IOWA & NEBRASKA RAILWAY CO.,

(Signed) By F. M. DRAKE, *President.*

THE WABASH, ST. LOUIS & PACIFIC RAILWAY CO.,

(Signed) By SOLON HUMPHREYS,
Chairman of Executive Committee.

(Signed) GEORGE UPDYKE,
H. C. THACHER,
HENRY HILL,
Trustees.

(Signed) JOHN TELFORD.

(Signed) JOHN TELFORD.

SCHEDULE A.

List of the rolling stock owned and controlled by the Missouri, Iowa and Nebraska Railroad Company on their present completed line of 118¼ miles.

6 engin-s, 16 by 24, thirty-two tons.

2 passenger coaches, 2 baggage cars, 1 mail car, 4 cabooses, 40

box and stock cars, 50 flat cars, 25 hand cars, 2 iron cars, flats for transportation of iron rails.

(Endorsed:) Filed Mar. 4, 1889. Geo. C. Moore, clerk.

EXHIBIT "B."

This indenture of lease, made this 3d day of September, A. D. 1880, by and between the Missouri, Iowa and Nebraska Railway Company, a consolidated corporation of Iowa and Missouri, of the first part, — the Wabash, St. Louis and Pacific Railway Company, a consolidated corporation of Ohio, Indiana, Illinois, and Missouri, of the second part, witnesseth:

101 The party of the first part, in pursuance of a resolution of its board of directors adopted on the — day of ——, A. D. 1880, and the further authorization of its stockholders thereto, and in consideration of the covenants and agreements on the part of the party of the second part hereinafter contained, does hereby let, demise, and lease unto the party of the second part, its successors and assigns, for the term of ninety-nine years from this date, renewable in like periods forever at the option of the *aprty* of the second *aprt*, the railroad of the party of the first part extending from the Mississippi river at Keokuk, Iowa, westerly through and across the States of Iowa and Missouri to a point on the Missouri river opposite Brownsville, Nebraska, as now owned, constructed, or used or as at any time hereafter the said railroad may be owned, constructed, or used by the said party of the first part, together with all embankments, bridges, turnouts, side tracks, water tanks, and fixtures, shops, engin- or other houses, turn-tables, engin-s, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all things, real or personal, now owned or used or that may hereafter be owned or used by the said party of the first part in connection with the said railroad and everything appertaining thereto, and all the franchises, powers, privileges, and chartered or other rights of the said party of the first part, so far as the same may be needful or advantageous to the said party of the second part as lessee of the premises above described, provided that the rights of the party of the first part to any subscription or promise payable on the completion of any part of its railroad is expressly reserved from the above:

To have and to hold the said demised railway and property, real and personal, and franchises, as above provided, unto the said party of the second part, its successors and assigns, to and for the full end and time of ninety-nine years from and after the date of these presents and any and all renewals thereof forever, at the option of the party of the second part, as above set forth.

102 And in consideration of the premises the party of the second part hereby covenants that it will maintain and operate the said railroad, fully maintaining the present equipment thereof and any further equipment which may be supplied at the cost of the party of the second part, keeping the said railroad and

equipment in good condition and repair for the full term of this lease and of any renewal thereof, and will indemnify and save harmless the said party of the first part from and against all damages and liabilities whatever in connection with the operation of the same, and will keep full and accurate accounts of all of its earnings from the same, which shall at all times be open to inspection by the duly constituted agents or committees of the party of the first part.

The party of the second part further covenants that it will, in each year while said property is held under this lease, set aside from the gross earnings a sum equal to thirty per cent. thereof and will apply the same as follows :

First. To the payment of all lawful taxes and assessments levied on said property.

Second. To the payment of the interest on the mortgage bonds of the party of the first part under its deed of trust or mortgage dated June 1st, 1870, and the supplementary indenture of March 1st, 1875.

Third. To the party of the first part, on the first days of April and October in each year, the balance of said thirty per cent. accruing from the earnings of said property for six months preceding the first days of March and September in each year.

Fourth. The party of the second part moreover expressly guarantees that the interest *payed* by it upon the mortgage bonds aforesaid of said first party shall not be less than at the rate of four and one-half per cent. per annum upon the par value of said bonds, which said first party stipulates does not exceed three million twenty-five thousand dollars.

103 The interest aforesaid shall be paid at the office or agency of the said second party, in the city of New York, on the first days of April and October in each year until such time as said bonds shall have been retired by foreclosure or exchange, as hereinafter referred to, but in no case shall this or any of the covenants herein be binding on said second party after it shall, for any cause other than its own acts, be divested of possession under this lease.

It is further mutually declared that this lease is made and accepted in furtherance of an agreement, February 12th, A. D. 1880, by and between the first and second parties hereto and the trustees of the holders of the mortgage bonds of the first party hereto, the rental above stipulated of four and one-half per cent. on said bonds of said first party, which have been issued to the amount of twenty thousand dollars per mile of completed road, being an equivalent for six per cent. on the fifteen thousand dollars per mile of said railroad in bonds of said first party hereafter to be issued in exchange therefor, as in said agreement provided.

It being found impracti-able for said first party to complete its railroad as in said agreement provided, the parties above named have procured the incorporation of a railroad company of Iowa, known as the Iowa, Missouri and Nebraska Railroad Company, to build and have a line of railroad from Prairieville, Iowa, to which point the first party's railroad has been completed, to and beyond

the junction with the railroad of the second party hereto, as specified in said agreement.

The second party hereby covenants that the completion of the railroad of the Iowa, Missouri and Nebraska Railroad Company to such point of junction shall be accepted by it in lieu of the completion of the railroad of the first party hereto as stipulated for in said agreement, it being mutually stipulated by the parties hereto that — shall continue otherwise in full force and unaffected.

The second party further covenants that in the event that
103*a* the Iowa, Missouri and Nebraska railroad above mentioned shall be completed to a junction as aforesaid before the exchange of stock and bonds provided for in said agreement shall be made, then the second party will thereafter pay, in addition to the rental hereinbefore provided for the holders of the bonds and stock of said first party, such sum in lieu of dividends as in and by said agreement it is provided shall be paid.

It is further expressly understood and agreed that the execution and acceptance of this lease shall constitute the second party the successor and assign of the first party as lessee of the Centerville, Moravia and Albia railroad, and as such, having all the rights and obligations of such lessee, the said second party particularly assuming to pay during such time as the Centerville, Moravia and Albia railroad shall remain in its possession and control the interest guaranteed by the first party upon four hundred first-mortgage bonds as part of the consideration for said lease.

The second party covenants that upon the presentation to it by the owner thereof of any receipt from the Farmers' Loan and Trust Company for the said mortgage bonds of the Missouri, Iowa and Nebraska Railroad Company given by said Farmers' Loan and Trust Company in pursuance of the plan of reorganization of said company, whereby the three trustees who signed the agreement of February 12th, 1880, were appointed, it will endorse upon or attach to said receipt the following:

"The Missouri, Iowa and Nebraska railroad has been leased to the Wabash, St. Louis and Pacific Railway Company upon terms which provide for the exchange of bonds covered by the within certificate at the rate of fifteen thousand dollars six per cent. bonds and five thousand dollars preferred stock of said Wabash, St. Louis and Pacific Railway Company for every twenty thousand dollars of said bonds, such exchange to be made only after the title of the lessee therein is perfected, as provided for in said agreement.

"Pending the steps necessary to legalize such exchange the
104 Wabash, St. Louis and Pacific Railway Company is to pay to the holder hereof interest at the rate of four and one-half per cent. on the par value of the bonds covered by this certificate.

"Whenever the Iowa, Missouri and Nebraska railroad shall have been constructed and the cars running thereon from Prairieville, Iowa, to a junction with the said Wabash, St. Louis and Pacific railway, so that said railway shall have a benefit of a continuous line from Keokuk, Iowa, to the junction aforesaid, then from that date, during its tenure under the said lease, the Wabash, St. Louis

and Pacific Railway Company shall pay as further rental such further sum as shall equal the dividends declared by said Wabash, St. Louis and Pacific Railway Company upon such an amount of the preferred stock above referred to as the holder hereof will by the terms of said lease be entitled to receive, the interest aforesaid to be paid at the office or agency of said Wabash, St. Louis and Pacific Railway Company, in the city of New York, on the first days of April and October in each year, commencing April 1st, 1881."

The second party further covenants that upon the deposit of certificates for any number of shares of the common stock of the Missouri, Iowa and Nebraska Railway Company by any stockholder with A. L. Hopkins, as trustee, accompanied by a power of attorney to said trustee to hold and vote said stock, the said trustee shall issue to said stockholder a receipt for the same in pursuance of this agreement, and to the effect that when the party of the second part shall become vested with a complete title to the property of the party of the first part it will issue to said stockholder in exchange for the stock so deposited the common stock of the said Wabash, St. Louis and Pacific Railway Company in the ratio that five thousand dollars of its said stock per mile on the line of the said Missouri, Iowa and Nebraska railway from Keokuk to Prairieville, Iowa (being 148½ miles), shall bear to the total issue of the stock of the party of the first part, and that — meantime, if the railroad of the Iowa, Missouri and Nebraska Railroad Company (now in process of
105 construction) shall be completed from Prairieville, Iowa, to a junction with the railway of the Wabash, St. Louis — Railway Company, so that said company shall enjoy and use a continuous railway from Keokuk, Iowa, to the junction of above named, then from that date until the exchange above mentioned shall be made (so long as in possession under this lease) the said company will pay to the holder of such certificate a sum equivalent to the dividends which said company may declare upon the same amount of common stock.

It is further stipulated and mutually agreed that before entering upon the back of the above-described receipts of the Farmers' Loan and Trust Company for the said Missouri, Iowa and Nebraska bonds the guaranty aforesaid or attaching the certificate of guaranty thereto the said receipts for bonds shall first have stamped or writ-en thereon:

"Subject to an agreement made by the within-named trustee with the Wabash, St. Louis and Pacific Railway Company for a consolidation or lease of the Missouri, Iowa and Nebraska railroad."

In witness whereof the first and second parties above named have caused their seals and signatures to be hereto affixed by their respective presidents and secretaries the day and year above writ-en.

MISSOURI, IOWA AND NEBRASKA RAILROAD COMPANY,

By F. M. DRAKE, *President.*

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,

By SOLON HUMPHREYS, *President.*

(Endorsed:) Filed Mar. 4, 1889. Geo. C. Moore, clerk.
(Which said answer and exhibits *is* endorsed as follows:) No. 19. Keokuk & Western R'y Co. *vs.* Clark County *et al.* Seperate
106 answer of Clark County to amended & substituted bill. Filed Mar. 4th, 1889. Geo. C. Moore, clerk. Anderson & Schofield, with T. L. Montgomery, for respondents.

Afterwards, to wit, on the same day, the following proceedings were had and appear of record, to wit:

KEOKUK & WESTERN R. R. Co., Complainant,
vs.
SCOTLAND COUNTY COURT *et al.*, Defendants. } 19.

At this day comes the complainant, by its solicitor, F. T. Hughes, and files replication to answer of the defendants, Scotland County Court, Robert M. Thompson, and others, in the above-entitled cause.

Which replication, with the endorsements thereon, is in words and figures:

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, May Term, 1888.

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, Missouri, Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing; The County Court of Clark County, Missouri, J. E. Todd, Mike Seyb, George Harter, and J. H. Million; The County Court of Schuyler County, Missouri, William Logan, N. Sloop, T. G. Neeley, and N. T. Roberts, Defendants. } In Chancery.

The replication of The Keokuk & Western R. R. Co., complainant to the answer of The County Court of Scotland County, Missouri, Robert M. Thompson, and others.

107 These repliants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by the repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these replian*ants* are and will be ready to aver, maintain, and prove as this

honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

F. T. HUGHES,
Complainants' Solicitor.

(Endorsed:) No. 19. Keokuk & Western R. R. Co. *vs.* Scotland County County Court *et al.* Replication to Scotland County Court *et al.* Filed Mar. 4, 1889. Geo. C. Moore, clerk.

Afterwards, to wit, on the same day, the following proceedings were had and appear of record, to wit:

KEOKUK & WESTERN R. R. Co., Complainant,
vs.
SCOTLAND COUNTY COURT *et al.*, Defendants. } 19.

At this day comes the complainant, by its solicitor, F. T. Hughes, Esq., and file- replication to answer of the defendants Clark County Court and others in the above-entitled cause.

108 Which said replication and the endorsements thereon *is* in words and figures, to wit:

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, May Term, 1888.

THE KEOKUK & WESTERN R. R. Co., Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, Missouri, Robert M. Thompson, Joseph E. Billups, W. W. Buford, and Joel Ewing; The County Court of Clark County, Missouri, J. E. Todd, Mike Seyb, George Harter, and J. H. Million; The County Court of Schuyler County, Missouri, William Logan, N. Sloop, T. G. Neeley, and N. T. Roberts, Defendants. } In Chancery.

The replication of The Keokuk & Western R. R. Co., complainant, to the answer of The County Court of Scotland County, Missouri, Robert M. Thompson, and others.

These complainants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by the replianants; without this, that any other matter of thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or

denied, is true; all which matters and things these repliants
109 are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

F. T. HUGHES,
Complainants' Solicitor.

(Endorsed:) No. 19. Keokuk & Western R. R. Co. *vs.* Scotland County Court *et al.* Replication to answer of Clark county court *et al.* Filed Mar. 4th, 1889. Geo. C. Moore, clerk.

Afterwards, to wit, on the 27th day of May, 1889, and during the regular May term, 1889, of said court, the following, among other, proceedings were had and appear of record, to wit:

KEOKUK AND WESTERN RAILWAY COMPANY, Complainant,
vs.
SCOTLAND COUNTY COURT *et al.*, Defendants. } 19.

And now, at this day, comes the complainant, by its solicitor, and also come the defendants, by their solicitors, and the motion for an injunction pending suit coming on to be heard is taken up and heard by the court, and the court having heard the testimony and agreement, said motion is submitted and by the court taken under advisement; and now, in open court, it being orally agreed by the respective parties, the whole cause is submitted for final determination upon the bill, answer, affidavits, and proofs, and by the court taken under advisement.

110 (The following, in addition to the exhibits referred to in the pleadings, are the proofs on the part of complainant:)

1.

(Copy of resolution of the board of directors to locate the line of the Missouri, Iowa & Nebraska Railway from Alexandria, Mo., to Centerville, Iowa, via Memphis, Scotland county, and Lancaster, Schuyler county.)

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigel, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of a resolution of the board of directors to locate the line of the Missouri, Iowa and Nebraska railway from Alexandria, Missouri, to Centerville, Iowa, via Memphis, in Scotland county, and Lancaster, in Schuyler county.

Filed October 12th, 1871, as appears by comparing the same with the original resolution now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal. Done at office this 13th day of March, A. D. eighteen hundred and seventy-three.

[L. S.] EUGENE F. WEIGEL,
Secretary of State.

At a meeting of the board of directors of the Missouri, Iowa and Nebraska Railway Company held at the office of the president, in Centerville, Iowa, on the 2nd day of October, A. D. 1871, there were present the following directors, to wit: F. M. Drake, James Fitz-Henry, A. Hoppie, William Bradley, J. A. Breazeale, W. F. Vermilion, J. A. Talbot, Jacob Rummel, and C. W. Brown, they being more than two-thirds of the entire number of said board of
111 directors; at which said meeting, among other things, the following resolution was adopted unanimously, to wit:

"Resolved, That for the purpose of economy in construction and and shortening distance from Alexandria, Mo., to Centerville, Iowa, the line of the Missouri, Iowa and Nebraska railway be permanently located from Alexandria to Centerville via Memphis, in Scotland, and Lancaster, in Schuyler, counties, Missouri." Said resolution, having been adopted by the votes of more than two-thirds of the board of directors, was declared adopted by the president.

STATE OF IOWA, }
Appanoose County, } *ss:*

I, C. W. Brown, secretary of the Missouri, Iowa and Nebraska Railway Company, do hereby certify that the above abstract of the record of the proceedings of the board of directors of the Missouri, Iowa and Nebraska Railway Company is correct, as shown by the record now in my office.

Centerville, Iowa, Oct. 10th, 1871.

[L. S.]

C. W. BROWN,
Sec'y M., I. & N. R'w'y Co.

STATE OF IOWA, }
Appanoose County, } *ss:*

On this 10th day of October, A. D. 1871, before me, the undersigned, a notary public in and for said county, personally appeared F. M. Drake, C. W. Brown, and W. F. Vermilion, known to me to be directors of the Missouri, Iowa and Nebraska Railway Company, who, being by me duly sworn, say that the statements made in the foregoing copy of proceedings are true, and that the aforesaid resolution was passed by a vote of two-thirds of the entire directory of said Missouri, Iowa and Nebraska Railway Company.

F. M. DRAKE.
C. W. BROWN.
W. F. VERMILION.

112 Subscribed and sworn to before me this 10th day of October, 1871.

[L. S.]

EUGENE C. HAYNES,
Notary Public.

2.

(*Affidavit of C. W. Merrihew.*)

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri, May Term, 1888.

KEOKUK & WESTERN RAILROAD COMPANY, Complainant,
against
ROBERT M. *Townsend*, W. W. BUFORD, JOSEPH E. BILLUPS, Judges of the County Court of Scotland County, *et al.*, Defendants.

Affidavit of C. W. Merrihew.

C. W. Merrihew, of lawful age, being introduced and sworn, deposed and says: I am 57 years of age, reside in Clark county, Missouri, and am by profession a lawyer; have resided there about 32 years.

About October, 1864, I was employed by the Alexandria & Bloomfield Railroad Company as a general agent to procure subscriptions to the capital stock of the said railroad company, and I continued to serve the company as such general agent until some time in the winter or spring of 1865. In the meantime I procured quite a large amount of stock, and the county court of Clark county, Missouri, subscribed two hundred thousand dollars ($200,000) to the capital stock of said railroad company. At a later period, however, owing to some difficulty in the stock subscriptions, the matter was finally settled by the county subscribing and issuing fifty thousand dollars ($50,000) and its bonds in payment of the stock.

113 I know that the line had been surveyed prior to the time I commenced work for the company, and I was furnished with a plat or survey of the proposed line of road through that county. I know that the business for the company was carried on and grading, bridging, and tieing done until about the year 1866, when the name was changed to the Alexandria & Nebraska City Railroad Company, and by that company the business was carried on up to the time of the consolidation. As I remember, at the time of the consolidation the most of the grading, bridging, and a large amount of tieing had been done along the line through both Clark and Scotland counties. In Scotland, however, the work had been mostly done through the northeast part of the county, known as Johnston township.

The present depot at Clark City, in said county, was built, as I remember, in 1866 or thereabouts.

Further than this deponent sayeth not.

(Signed) C. W. MERYHEW.

STATE OF IOWA,)
County of Lee.)

Subscribed and sworn to before me, the undersigned, a notary public in and for the county and State aforesaid, this 3d day of March, 1888.

[L. s.] (Signed) WILLIAM T. RANKIN,
Notary Public in and for Lee County, Iowa.

114 3.

(*Affidavit of P. W. Plantz.*)

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri.

KEOKUK & WESTERN RAILROAD COMPANY
against
ROBERT M. THOMPSON, W. BUFORD, JOSEPH E. BILLUPS, Judges of the County Court of Scotland County, *et al.*

Affidavit of P. W. Plantz.

STATE OF ILLINOIS, } ss:
County of Hancock, }

I, P. W. Plantz, being duly sworn, on my oath state that I was secretary of the Alexandria & Bloomfield Railroad Company from May 7th, 1866, on which day I was elected as such secretary, and prior to that time I had acted as secretary *pro tem.* in the absence of the regular secretary, and I was also secretary of the Alexandria and Nebraska City Railroad Company, the successor of the said Alexandria and Bloomfield Railroad Company, and was secretary of said Alexandria & Nebraska City Railroad Company up to the time of the consolidation with the Iowa Southern Railway Company, forming the Missouri, Iowa and Nebraska Railway Company. I first served as secretary *pro tem.* of the said Alexandria and Bloomfield Railroad Company in June, 1865, and acted as secretary *pro tem.* at most of the meetings until I was elected secretary.

The leather-backed book here shown me, purporting to be the minute book of the proceedings of the Alexandria and Bloomfield Railroad Company from 1864 to 1866 and of the Alexandria and Nebraska City Railroad Company from 1866 to May 2nd, 1870, to and including page 216, I know to be the genuine and true record of the proceedings of said companies, so far as the same were kept by me, and the book prior to the time I kept said proceedings was kept and reputed to be the records and proceedings of the said Alexandria and Bloomfield — Co., and as such came into my hands
115 as such secretary, and the name of P. W. Plantz, as secretary and secretary *pro tem.*, to said proceedings was signed by me, and all the records so signed by me are in my handwriting and written by me in said book.

The said book to which I refer I now, for the purpose of identification, inscribed my name on page 217 thereof and ask the notary to sign his name and affix his seal thereon as Exhibit "A."

P. W. PLANTZ.

Subscribed and sworn to before me by the said P. W. Plantz this 8th day of March, A. D. 1888.

[L. S.] HENRY J. M. LUEDDE,
Notary Public.

4.

(*Affidavit of H. Hill.*)

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri, May Term, 1888.

KEOKUK & WESTERN RAILROAD COMPANY, Complainant,
against
ROBERT M. *Townsend*, W. W. BUFORD, JOSEPH E. BILLUPS, Judges of the County Court of Scotland County, *et al.*, Defendants.

Affidavit of Henry Hill.

I, Henry Hill, of lawful age, being produced and sworn, on oath say that I was one of the directors elected at a meeting of the stockholders of the Alexandria & Bloomfield Railroad Company held in the town of Alexandria, Clark county, Missouri, on or about the 17th day of September, 1864. At such meeting myself and others were elected as directors of the said Alexandria & Bloomfield Rail-
116 road Company, and that at such meeting Robert E. Hill, one of the parties named in the charter of the Alexandria & Bloomfield Railroad Company as one of the incorporators thereof, was at such meeting and was chosen president of the said meeting and presided over the same, and that said meeting had been called by said Robert E. Hill.

That I know of my own knowledge that the said railroad company from that time forward was actively engaged in procuring stock subscriptions and in surveying and constructing its road; that during the year 1864 the line was surveyed and work and grading done in the construction of said road in Clark county, Missouri, and that the said railroad company proceeded as fast as means could be obtained to carry on the work during that year and the years 1865 and 1866 to build and construct the road through said county.

That in the year 1865 or 1866 some contract had been entered into and the line surveyed and grading done to a certain extent in Scotland county, Missouri; that prior to the 1st of Jan'y, 1867, a large amount of grading and work had been done and paid for in Clark and Scotland counties, Missouri; that on or about the 15th day of September, 1866, a contract was entered into between the Alexandria and Nebraska City Railroad Company, the successor of the Alexandria & Bloomfield Railroad Company, with the county court of Scotland county, Missouri, whereby the said county court agreed to pay seventy-five thousand dollars ($75,000.00) to have the road located and constructed from a point near Luray, in Clark county, Missouri, to the town of Memphis, in Scotland county, Missouri; that immediately after the acceptance of the said contract the said Alexandria and Nebraska City Railroad Company caused the line to be surveyed from the point near Luray to Memphis, and immediately began the work of construction on the line in some parts of Scotland county, and was proceeding with the work when the county of Scotland refused to carry out its contract, as before

stated, and the work for a time ceased; that afterwards, in 1870 and 1871, the line was constructed and put in operation by the
117 Missouri, Iowa & Nebraska Railroad Company, successor to the said Alexandria & Nebraska City Railroad Company, substancially on the line as located and partially graded in 1866 and 1867; and further than this deponent sayeth not.

(Signed) HENRY HILL.

STATE OF CALIFORNIA, }
County of San Bernardino. }

Subscribed and sworn to before me, the undersigned, a notary public in and for the county and State aforesaid, this 29th day of March, 1888.

[L. S.] (Signed) JAMES H. BOYD,
Notary Public.

5.

(*Affidavit of James Fitz Henry.*)

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri.

KEOKUK AND WESTERN RAILROAD COMPANY
against
ROBERT M. THOMPSON, W. BUFORD, JOSEPH E. BILLUPS, Judges of the County Court of Scotland County, *et al.*

Affidavit of James Fitz Henry.

STATE OF IOWA, }
Lee County, } *ss:*

I, James Fitz Henry, of lawful age, being first duly sworn, on my oath say that the Alexandria & Bloomfield Railroad Company was organized prior to the commencement of work in the fall of 1864, and in that fall and during that winter of 1864–'5 the work of construction of said road was being carried on in Clark county,
118 Missouri. They were procuring rights of way, & as fast as they could obtain the means therefor were bridging, grading, procuring ties and materials for the construction of the road, and this was carried on continuously by the said Alexandria & Bloomfield Company until some time in the year 1866, when the name was changed to that of the Alexandria and Nebraska City Railroad Company, and then by that company the work was carried on up to the date of the consolidation of the latter company with the Iowa Southern Railway Company, forming the said Missouri, Iowa and Nebraska Railway Company. That company completed the road during the years 1870 and 1871 through said Clark and Scotland counties; but the grading, bridging, and most of the ties for this line had been practically completed and procured by the former companies before the said consolidation in 1870.

The book, leather-backed, purporting to be the records and pro-

ceedings of the Alexandria & Bloomfield Railroad Company from 1864 to 1866, and from thence to 1870 as the records and proceedings of the Alexandria & Nebraska City Railroad Company to and including page 216 of said record book, I know to be the genuine and true record of the said companies. I know that E. P. Buell, who signes the records as president from the beginning in said book to the end, was the president of said company during those periods, and I know his handwriting and that the signatures to the various records in said book by him as president are his genuine and true signatures. I further state that I was a director of the Alexandria & Bloomfield and of the Alexandria & Nebraska City railroad companies, and that the record book referred to was the only true and proper record of the companies; and I further say that after 1870 for a number of years I was secretary of the said Missouri, Iowa and Nebraska Railway Company, and that the book referred to came regularly into said Missouri, Iowa & Nebraska Railway Co. as the successor of the said Alexandria and Nebraska City
119 Railroad Co. and was kept thereafter as the only true and proper record of said companies; and I further say that I now find the said record book in the office of F. T. Hughes, president of the Keokuk & Western Railroad Company, the successor of said Missouri, Iowa & Nebraska Railway Company. The said book to which I refer I now identify by reindorsing same with my signature on page 217 thereof, and ask that the notary, in evidence of the same, attach his name and seal to said identification as Exhibit "A" hereof.

JAS. FITZ HENRY.

Subscribed and sworn to before me by the said James Fitz Henry this 3rd day of March, 1888.

[L. S.] WM. T. RANKIN,
Notary Public, Lee County, Iowa.

6.

(*Affidavit of S. Wheatley.*)

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri.

KEOKUK AND WESTERN RAILROAD COMPANY
against
ROBERT M. THOMPSON, W. BUFORD, JOSEPH E. BILLUPS, Judges of the County Court of Scotland County, *et al.*

Affidavit of S. Wheatley.

STATE OF IOWA, }
Lee County, } *ss:*

I, S. Wheatley, being first duly sworn, on my oath state
120 that I lived in Scotland county, Missouri, at the town of Arbela, from the year 1851 to 1878, when I moved into Clark

county, Missouri, and I now reside at Ashton, in said last-named county. I remember the fact of the work being done in Scotland county by the Alexandria and Nebraska City Railroad Company long prior to the consolidation of that company with the Iowa Southern Railway Company and before it became the Missouri, Iowa & Nebraska Railway Co. The first work I remember of was in the fall and winter of 1866–'7 and the work of grading and bridging and the procuring of ties was being carried on, first in a direction northeast of Memphis and then on the line the same as now located from Luray to Memphis. I remember of a lawsuit that was had concerning the ownership of a grading machine which was used on the grade as at present located and three miles east of Memphis; this was about 1867 or 1868. The said machine had been used by contractors under E. P. Buell for the Alexandria & Nebraska City Railroad Co., and the workmen not being paid their wages attached the machine. The road was not practically graded and bridged and ties procured through Scotland county before the consolidation forming the Missouri, Iowa & Nebraska railway, and this latter company completed the road in 1870 and 1871 through Scotland county very shortly after taking charge of the same.

S. WHEATLEY.

Subscribed and sworn to before me by the said S. Wheatley this 7th day of March, A. D. 1888.

[L. S.] WM. T. RANKIN,
Notary Public in and for Lee County, Iowa.

121 7.

(*Affidavit of J. W. Summers.*)

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri.

KEOKUK & WESTERN RAILROAD COMPANY
against
ROBERT M. THOMPSON, W. BUFORD, JOSEPH E. BILLUPS, Judges of the County Court of Scotland County, *et al.*

Affidavit of J. W. Sommers.

STATE OF IOWA, *Lee County,* } *ss:*

I, J. W. Summers, of lawful age, being first duly sworn, on my oath say that I resided in Clark county, Missouri, from the year 1840 to the year 1878 and in the fall and winter of 1864–1865. I know that the construction of the Alexandria & Bloomfield railroad was being carried on in Clark county during said fall and winter. I remember C. W. Merrihew was an agent for the company procuring subscriptions for stock, and that surveys were being made and rights of way procured along the proposed line. I was absent during the summer of 1865; but when I returned in the fall of that

year the work of construction of said road was being carried on as fast as the means could be reasonably obtained. They were procuring rights of way, grading, bridging, procuring ties and materials for the construction of the road, and I know that this was continued and carried on continuously by the said Alexandria & Bloomfield Company in Clark and Scotland counties until some time in the year 1866, when the name was changed to that of the Alexandria and Nebraska City Railroad Company, and then by that company the work was carried on up to the date of the consolidation of the latter company with the Iowa Southern Railway Company, forming the said Missouri, Iowa & Nebraska Railway Company.

122 That company, I think, completed the road during the years 1870 and 1871 through said Clark and Scotland counties; I will say, however, that the grading, bridging, and most of the ties for this line had been practically completed and procured by the former companies before the said consolidation in 1870. I think, however, the line as graded through Scotland county passed north of the town of Memphis. My impressions are, however, that a line had been located from some place near Luray to the town of Memphis by the said Alexandria and Nebraska City Railroad Company prior to the said consolidation, and that some work had been done on that line, on which the said road was after 1870 built. I get this impression from the fact that when I was procuring the rights of way for said Missouri, Iowa and Nebraska Railway Company I remember there had been a lawsuit or some trouble between some people and the contractors on the road near the town of Arbela, in said Scotland county, about a certain grading machine; and I know further that on that occasion I had a lot of deeds in my possession given to the said Alexandria and Nebraska City Railroad Company during the year 1866, or at least the deeds before that date, by various persons along the line of said railroad from the town of Luray to and in the town of Memphis. The right of way as described in these deeds was, as I remember, the same as that on which the line was constructed by the said Missouri, Iowa and Nebraska Railway Company; I talked with some of the parties concerning these deeds while I was along the line at the time aforesaid. Furthe- deponent saith not.

JAS. W. SUMMERS.

Subscribed and sworn to before me by the said James W. Summers this 3rd day of March, 1888.

[L. S.] WILLIAM T. RANKIN,
Notary Public in and for Lee County, Iowa.

123 S.

(*Affidavit of R. D. Cramer, with Exhibits "A," "B," "C," & "D" Thereto Attached and Referred to.*)

KEOKUK & WESTERN RAILROAD COMPANY, Pl'tiff,
vs.
ROBERT M. THOMPSON, W. BUFORD, and JOSEPH E. Billups, Judges of the County Court of Scotland County, Missouri, Def'ts.

Affidavit of Robert D. Cramer.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Missouri.

STATE OF MISSOURI, *County of Scotland,* } *ss:*

Now, at this day, comes Robert D. Cramer, and upon his oath states that he has examined the signatures of the grantors signed to the deeds for right of way hereto attached, and that he is acquainted with the handwriting and the signatures of H. G. Pitkin, Washington Hudson, C. S. Baker, Chas. Mety, and James S. Best, and that the deed herewith attached and marked Exhibit "A," of the relinquishment of the right of way by H. G. Pitkin to the Alexandria and Nebraska City Railroad Company, dated the 27th day of Sept., 1866, and signed by H. G. Pitkin, is in the handwriting and is the genuine signature of said H. G. Pitkin as such grantor.

That the deed hereto attached and marked Exhibit "B," of the relinquishment of the right of way by Charles Mety to Alexandria and Nebraska City Railroad Company, dated Sept. 27th, 1866, and signed Chas. Mety, is in the handwriting and is the genuine signature of Chas. Mety as such grantor.

That the deed hereto attached and marked Exhibit "C," *is* of the relinquishment of the right of way by Charles S. Baker to the Alexandria — Nebraska City Railroad Company, dated Sept. 27th, 1866, and signed C. S. Baker, is in the handwriting and is the
124 genuine signature of C. S. Baker as such grantor.

That the deed hereto attached and marked Exhibit "D," of the relinquishment of the right of way by Washington Hudson to the Alexandria and Nebraska City Railroad Company, dated Sept. 27, 1866, and signed Washington Hudson, is in the handwriting and is the genuine signature of Washington Hudson as such grantor.

That the deed herewith attached and marked Exhibit "E," of the relinquishment of the right of way by James S. Best to Alexandria — Nebraska City Railroad Company, dated Sept. 26th, 1866, and signed James S. Best, is in the handwriting and is the genuine signature of James S. Best as such grantor.

And this affiant further states that afterward, to wit, in the year 186– and 18— a line of railroad known as the Missouri, Iowa and Nebraska railway was located, constructed, and built through the county of Scotland and State of Missouri on the line of right of way as included in the right-of-way conveyances herewith attached.

Robert D. Cramer, being duly sworn, upon his oath says that the

matters and things stated in the foregoing affidavit are true, as he verily believes.

ROBERT D. CRAMER.

Subscribed and sworn to before me this the 7th day of March, A. D. 1888.

[L. S.] JAMES P. NESBIT,
County Clerk.

(EXHIBIT "A" TO AFFIDAVIT OF R. D. CRAMER.)

Know all men by these presents that whereas the Alexandria and Nebraska City Railroad Company are about to construct a railroad over and across the premises hereinafter described, now, therefore, in consideration of the premises and the sum of one dollar to me in hand paid by the said company, I, Henry G. Pitkin, of the
125 county of Scotland and State of Missouri, do by these presents give, grant, confirm, and release unto said company, for and during the full term of the existence of said corporation, the right, privilege, and authority to build, erect, construct, reconstruct, and keep in repair a railroad of the kind and character that said company are by their charter authorized to construct over, upon, and across the following-described piece or parcel of land, lying and being in the county of Scotland and State of Missouri, to wit, lots number four and five of Oak Ridge addition (4 & 5) of the town of Memphis, county of Scotland, and State of Missouri, wherever said company may locate the same; provided—

The right of way above granted to be one hundred feet wide, and the said company are hereby authorized and empowered to take and use for the purpose of said road all and any gravel, rock, or timber being on the ground over which the right of way for said road above granted and within the limits of said one hundred feet in width:

To have and to hold the right of way above granted and the rights above conveyed to said Alexandria and Nebraska City Railroad Company for and during the full term of the existence of said corporation.

And witness my hand and seal this 27th day of September, 1866.

H. G. PITKIN.

STATE OF MISSOURI, } ss:
County of ——, }

Be it remembered that on the — day of ——, 18—, personally appeared before me, the undersigned, an acting justice of the peace within and for the county aforesaid, —— ——, who is personally known to me to be the identical person whose name is subscribed to the above deed and who executed the same, and acknowledged that he had executed said deed for the uses and purposes therein expressed.

As witness my hand and seal the day and year above written.

—— ——.

126 (EXHIBIT "B" TO AFFIDAVIT OF R. D. CRAMER.)

Know all men by these presents that whereas the Alexandria and Nebraska City Railroad Company are about to construct a railroad over and across the premises hereinafter described: Now, therefore, in consideration of the premises and the sum of one dollar to me in hand paid by the said company, I, Charles Mety, of the county of Scotland and State of Missouri, do by these presents give, grant, confirm, and release unto said company for and during the full term of the existence of said corporation the right, privilege, and authority to build, erect, construct, reconstruct, and keep in repair a railroad of the kind and character that said company are by their charter authorized to construct over, upon, and across the following-described piece or parcel of land lying and being in the county of Scotland and State of Missouri, to wit, lot number one (1) of the southwest quarter of section number six (6) and the northwest quarter of the northeast quarter of section seven (7), in township sixty-five (65), range eleven (11) west, wherever said company may locate the same; provided—

The right of way above granted to be one hundred feet wide, and the said company are hereby authorized and empowered to take and use for the purpose of said road all and any gravel, rock on the ground over which the right of way for said road above granted and within the limits of said one hundred feet in width:

To have and to hold the right of way above granted and the rights above conveyed to said Alexandria and Nebraska City Railroad Company for and during the full term and existence of said corporation.

And witness my hand and seal this 27th day of September, 1866.

CHARLES METY.

STATE OF MISSOURI, } ss:
County of ——, }

127 Be it remembered that on the — day of ——, 18—, personally appeared before the undersigned, an acting justice of the peace within and for the county aforesaid, —— ——, who is personally known to me to be the identical person whose name is subscribed to the above deed and who executed the same, and acknowledged that he had executed said deed for the uses and purposes therein expressed.

As witness my hand and seal the day and year above written.

—— ——.

(EXHIBIT "C" TO AFFIDAVIT OF R. D. CRAMER.)

Know all men by these presents that whereas the Alexandria and Nebraska City Railroad Company are about to construct a railroad over and across the premises hereinafter described: Now, therefore, in consideration of the premises and the sum of one dol-

lar to me in hand paid by the said company, I, Charles S. Baker, of the county of Scotland and State of Missouri, do by these presents give, grant, confirm, and release unto said company for and during the full term of the existence of said corporation the right, privilege, and authority to build, erect, construct, reconstruct, and keep in repair a railroad of the kind and character that said company are by their charter authorized to construct over, upon, and across the following-described piece or parcel of land, lying and being in the county of Scotland and State of Missouri, to wit, lots numbered fifteen (15), twenty (20), and twenty-three (23), in the Oak Ridge addition to the town of Memphis—

Wherever said company may locate the same; provided the same shall be located on the south line of said lots—

The right of way above granted to be one hundred feet wide, and the said company are hereby authorized and empowered to take and use for the purpose of said road all and any gravel, rock, or timber being on the ground over which the right of way for
128 said road above granted and within the limits of said one hundred feet in width:

To have and to hold the right of way above granted and the rights above conveyed to said Alexandria and Nebraska City Railroad Company for and during the full term of the existence of said corporation.

And witness my hand and seal this 27th day of September, 1866.

C. S. BAKER. [SEAL.]

STATE OF MISSOURI, }
County of Scotland, } ss:

Be it remembered that on the — day of ——, 18—, personally appeared before me, the undersigned, an acting justice of the peace within and for the county aforesaid, —— ——, who is personally known to me to be the identical person whose name is subscribed to the above deed and who executed the same, and acknowledged that he had executed said deed for the uses and purposes therein expressed.

As witness my hand and seal the day and year above writ-en.

—— ——.

(EXHIBIT "D" TO AFFIDAVIT OF R. D. CRAMER.)

Know all men by these presents that whereas the Alexandria and Nebraska City Railroad Company are about to construct a railroad over and across the premises hereinafter described: Now, therefore, in consideration of the premises and the sum of one dollar to me in hand paid by the said company, I, Washington Hudson, of the county of Scotland and State of Missouri, do by these presents give, grant, confirm, and release unto said company for and during the full term of the existence of said corporation the right, privilege, and authority to build, erect, construct, reconstruct, and keep in repair a railroad of the kind and character that said
129 company are by their charter authorized to construct over, upon, and across the following-described piece or parcel of

land, lying and being in the county of Scotland and State of Missouri, to wit, fifty feet off the north side of lot number twenty-three of Oak Ridge addition to the town of Memphis, of Scotland county, Missouri, wherever said company may locate the same; provided—

The right of way above granted to be one hundred feet wide, and the said company are hereby authorized and empowered to take and use for the purpose of said road all and any gravel, rock, or timber being on the ground over which the right of way for said road above granted and within the limits of said one hundred feet in width:

To have and to hold the right of way above granted and the rights above conveyed to said Alexandria and Nebraska City Railroad Company for and during the full term and existence of said corporation.

And witness my hand and seal this 27th day of September, 1866.

WASHINGTON HUDSON.

STATE OF MISSOURI, } ss:
County of ——, }

Be it remembered that on the — day of ——, 18—, personally appeared before the undersigned, an acting justice of the peace within and for the county aforesaid, —— ——, who is personally known to me to be the identical person whose name is subscribed to the above deed and who executed the same, and acknowledged that he executed said deed for the uses and purposes therein expressed.

As witness my hand and seal the day and year above written.

—— ——.

130 (*Deed of O. S. Jones.*)

Know all men by these presents that whereas the Alexandria and Nebraska City Railroad Company are about to construct a railroad over and across the premises hereinafter described: Now, therefore, in consideration of the premises and the sum of one dollar to me in hand paid by the said company, I, Oran S. Jones, of the county of Scotland and State of Missouri, do by these presents give, grant, confirm, and release unto said company for and during the full term of the existence of said corporation the right, privilege, and *and* authority to build, erect, construct, reconstruct, and keep in repair a railroad of the kind and character that said company are by their charter authorized to construct over, upon, and across the following-described piece or parcel of land, lying and being in the county of Scotland and State of Missouri, to wit, the west half of the southeast quarter and the southwest quarter of section number two, in township sixty-five, range 10 west, containing three hundred and twenty acres, wherever said company may locate same; provided the right of way above granted to be one hundred feet wide, and the said company are hereby authorized and empowered to take and use for the purpose of said road all and any gravel, rock, or timber being on the ground over which the right of way for said road above granted and within the limits of said one hundred feet in width:

To have and to hold the right of way above granted and the rights above conveyed to said Alexandria and Nebraska City Railroad company for and during the full term and existence of said corporation.

And witness my hand and seal this 22nd day of October, 1866.

ORIN S. JONES.

STATE OF MISSOURI, } ss:
County of ——, }

131 Be it remembered that on the — day of ——, 18—, personally appeared before the undersigned, an acting justice of the peace within and for the county aforesaid, —— ——, who is personally known to me to be the identical person whose name is subscribed to the above deed and who executed the same, and acknowledged that he had executed said deed for the uses and purposes therein expressed.

As witness my hand and seal the day and year above writ-en.

—— ——.

10.

(*Deed of Meshack Teter.*)

Know all men by these presents that whereas the Alexandria and Nebraska City Railroad Company are about to construct a railroad over and across the premises hereinafter described: Now, therefore, in consideration of the premises and the sum of one dollar to me in hand paid by the said company, I, Meshack Teter, of the county of Scotland and State of Missouri, do by these presents give, grant, confirm, and release unto said company for and during the full term of the existence of said corporation the right, power, privilege, and authority to build, erect, construct, reconstruct, and keep in repair a railroad of the kind and character that said company are by their charter authorized to construct over, upon, and across the following-described piece or parcel of land, lying and being in the county of Scotland and State of Missouri, to wit, east half of the northeast quarter of section number seven; also the west half of the northwest quarter of section number eight, in township sixty-five, range ten west, wherever said company may locate the same; provided that the said company make for me two farm crossings at places as I may choose on my farm; also all necessary cattle-guards; the right of way above granted to be one hundred feet wide;
132 and said company are hereby authorized and empowered to take and use for the purpose of said road all and any gravel, rock, or timber being on the ground over which the right of way for said road above granted and within the limits of said one hundred feet in width:

To have and to hold the right of way above granted and the rights above conveyed to said Alexandria and Nebraska City Railroad Company and during the full term and existence of said corporation.

As witness my hand and seal this first day of November, 1866.

M. TETER.

STATE OF MISSOURI, } ss:
County of ——, }

Be it remembered that on the — day of ——, 18—, personally appeared before me, the undersigned, an acting justice of the peace within and for the county aforesaid, —— ——, who is personally known to me to be the identical person whose name is subscribed to the above deed and who executed the same, and acknowledged that he had executed the said deed for the uses and purposes therein expressed.

As witness my hand and seal the day and year above written.

—— ——.

11.

(*Certified Copy of Order of County Court of Scotland Co., Made at Sept. Term*, 1885, *in the Matter of Taxing M., I. & N. R. R.*, 1885.)

August Adj'n'd Term, 1885.

STATE OF MISSOURI, } ss:
County of Scotland, }

In the county court of said county, on the seventh day of September, 1885, the following, among other, proceedings were had, viz:

133 In compliance with article eight of chapter 142 of the Revised Statutes of the State of Missouri it is ordered by the court that there be, and there is hereby, levied on the assessed valuation of the Missouri, Iowa and Nebraska Railroad Company, as adjusted, equalized, and assessed by the State board of assessment and equalization of railroad property for the year 1885, as shown by the certificate of the State auditor for said year, the following taxes, to wit:

For the payment of the State revenue there is levied a tax of two mills on the one dollar valuation of said property.

For the payment of the State interest there is levied a tax of two mills on the one dollar valuation of said property.

For the purpose of meeting the current expenses of the county for the ensuing year, to be known as the county revenue fund, there is levied a tax of five (5) mills on the one dollar valuation of said property.

For school purposes, estimated in the manner prescribed by law, there is levied a tax of five and one-half mills on the one dollar valuation of said property, to be apportioned according to law.

For the purpose of the payment of the following judgments obtained in the United States circuit court for the eastern district of Missouri, in April, 1884, and costs taxed thereon, with interest at the rate of six per cent. since date of the same, including the costs of collection, to wit, one judgment in case of Wm. Hill *vs.* Scotland County, for the sum of $4,968.00; William L. Du Bois *vs.* Scotland County, for the sum of $3,542.40; Philadelphia Trust, Safe Deposit and Insurance Company, for the sum of $4,132.80, and one in favor of Belinda J. Thomas, for the sum of $2,462.40, including all costs,

taxed, and interest on said judgments, there is levied a tax of seven mills on the one dollars valuation of said property.

For the payment of the interest on compromise bonds and the interest on the amount of bonds given and due the county school fund for borrowed money from same there is levied a tax of
134 one (1) mill on the one dollar valuation of said property.

For the payment of the current expense of the city of Memphis for the ensuing year there is levied, in the manner provided by statute, a tax of five mills on the dollars valuation of said property, to be subdivided in the same proportion as the tax levied by said city on other property of said city.

STATE OF MISSOURI, } ss:
County of Scotland, }

I, James P. Nesbit, clerk of the county court in and for said county, do hereby certify *that* the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Memphis, this the 13th day of March, 1888.

[L. S.] JAMES P. NESBIT,
Clerk County Court,
By —— ——, *D. C.*

12.

(Certified Copy of Record Scotland Co. Court in the Matter of Taxing M., I. & N. Ry for 1886.

STATE OF MISSOURI, } ss:
County of Scotland, }

In the county court of Scotland county, at the August term, 1886, held on the 7th day of August, 1886, amongst others were the following proceedings:

"In compliance with article eight of chapter 142 of the Revised Statutes of Missouri it is ordered by the court that there be,
135 and there is hereby, levied on the assessed valuation of the Missouri, Iowa and Nebraska Railway Company, as adjusted, equalized, and assessed by the State board of equalization and assessment of railroad property for the year 1886, as shown by the certificate of the State auditor for said year, the following taxes, to wit: For the payment of the State revenue there is levied a tax of two mills on the one dollar valuation of said property; for the payment of State interest there is levied a tax of two mills on the one dollar valuation of said property; for the purpose of meeting the current expenses of the county for the ensuing year, to be known as the county revenue fund, there is levied a tax of five mills on the one dollar valuation of said property; for school purposes, estimated in the manner prescribed by law, there is levied a tax of forty-six (46) cents on the one hundred dollars valuation of said

property, to be apportioned when collected according to law; for the current expenses of the city of Memphis for the ensuing year there is levied, in *in* the manner provided by statute, a tax of two and one-half (2½) mills on the one dollar valuation of said property, to be subdivided in the same proportion as the tax levied by said city on other property in said city."

A true copy from the records of said court.

Witness my hand and seal of said court this 13th day of March, 1888.

[L. S.] JAMES P. NESBIT,
County Clerk.
—— ——, *Deputy.*

13.

(*Certified Copy of Order of County Court of Scotland Co. Made at August Term*, 1887, *in the Matter of Taxing M., I. & N. R. R. Co.*, 1887.)

STATE OF MISSOURI, } *ss:*
County of Scotland, }

August Term, 1887.

136 In the county court of said county, on the 29th day of August, 1887, the following, among other, proceedings were had, viz:

"In compliance with article eight (8) of chapter one hundred and forty-three (143) of the Revised Statutes of the State of Missouri it is ordered by the court that there be, and is hereby, levied on the assessed valuation of the Keokuk and Western Railway Company, as adjusted, equalized, and assessed by the State board of assessment and equalization of railroad property for the year 1887, as shown by the certificate of the State auditor for said year, the following taxes, to wit:

For the payment of the State revenue there is levied a tax of two mills on the one dollar valuation of said property.

For the payment of State interest there is levied a tax of two mills on the one dollar valuation of said property.

For the purpose of meeting the current expenses of the county for the ensuing year, to be known as the county revenue fund, there is levied a tax of five mills on the one dollar valuation of said property.

For the payment of interest on school and compromise bonds, the same to be known as the county interest fund, there is levied a tax of one mill on the one dollar valuation of said property.

For the payment of all necessary expense incurred in the building of bridges and repairing bridges and roads, including the pay of road overseers of said county, one and one-half mills on the one dollar valuation of said property.

For school purposes, estimated in the manner prescribed by law, there is levied a tax of forty-three cents on the one hundred dollars

valuation of said property, to be apportioned when collected according to law."

STATE OF MISSOURI, } ss:
County of Scotland, }

I, James P. Nesbit, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day
137 and year above written as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Memphis, this the 13th day of March, 1888.

[L. S.]

JAMES P. NESBIT,
Clerk County Court,
By —— ——, *D. C.*

14.

(*Certificate of Jas. P. Nesbit, County Clerk of Scotland Co.*)

STATE OF MISSOURI, } ss:
County of Scotland, }

I, James P. Nesbit, clerk of the said county and State aforesaid and custodian of the Co. court records and papers, do hereby certify that I have examined the county court records and find no orders of record taxing the Missouri, Iowa and Nebraska R. R. Co. or the Keokuk and Western R. R. Co. except for the years 1877, '78, & '79. For the year 1885, the year 1886, and the year 1887 the R. R. tax book of Scotland county shows the railroads above mentioned to have been taxed and the taxes extended thereon against the M., I. & N. R. R. Co. for the years 1880, 1881, 1882, 1885, 1886, and against the Keokuk & Western R. R. Co. for the year 1887. I can find no order of court in reference to the said taxes levied for the years 1880, 1881, and 1882.

Witness my hand and seal this 13th day of March, 1888.

[L. S.]

JAMES P. NESBIT,
County Clerk.

138 (15. *Schuyler County Tax Statement.*)

Abstract of taxes levied on the Keokuk and Western Railroad Company by Schuyler county, Missouri, for the years 1881 to 1887, inclusive, as the same appears on the railroad tax books of said county for said years.

Name of railway company.	Aggregate value in county.	Years.	State tax.	County tax.	Clark & Dubois judgment tax.	Liberty t'w'p tax.	School tax.	County R. R. tax.
Missouri, Iowa and Nebraska.....	79,500 00	1885	318 00	379 50	47 76	.....	340 17	556 50
Missouri, Iowa and Nebraska.....	89,500 00	1886	358 00	447 50	.....	.....	482 32	268 50
Keokuk and Western.....	99,500 00	1887	398 00	497 50	.....	58 20	506 94	497 50

I, C. W. Bunch, clerk of the county court in and for said Schuyler county, Missouri, do hereby certify that the above and foregoing is a complete, correct, and true abstract of taxes levied on the property of the Keokuk and Western Railway Company situate in Schuyler county, Missouri, and for the years as above set forth, as the same appears from the railroad tax books of said county.

In testimony whereof I have hereunto set my hand and seal of the county court of said county.

[L. S.] Done at office, in the town of Lancaster, this 6th day of March, A. D. 1888.

C. W. BUNCH,
Clerk County Court.

139 16.

(*Affidavit of F. T. Hughes.*)

In Circuit Court United States, Northern Division, Eastern District of Missouri.

KEOKUK & WESTERN RAILROAD COMPANY, Compl't, *vs.* SCOTLAND COUNTY COURT *et al.* } Injunction.

F. T. Hughes, being duly sworn, says that he resided in Schuyler county, Missouri, during the year 1872, and was then one of the attorneys of the Missouri, Iowa & Nebraska Railway Company; that he knows that the said road was completed to the State line between Missouri & Iowa on the north line of Schuyler county about the second day of December, 1872; & further deponent saveth not.

F. T. HUGHES.

Subscribed and sworn to before me this 27th day of May, 1889.

GEO. C. MOORE, *Clerk.*

17.

(*Certified Copy of Judgment of Supreme Court of Missouri Affirming Judgment of Scotland Co. Cir. Court in Case of Scotland County vs. M., I. & N. R'y Co.*)

Supreme Court of Missouri, April Term, 1887.

SCOTLAND COUNTY, Appellant, *vs.* MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, Respondent. } Appeal from Scotland County Circuit Court.

Now, at this day, again come the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently
140 advised of and concerning the premises, do consider and adjudge that the judgment aforesaid in form aforesaid by the said Scotland county circuit court rendered be in all things

affirmed and stand in full force and effect; and it is further considered and adjuged by the court that the said respondent recover against the said appellants its costs and charges herein expended, and have therefor execution.

(Opinion filed.)

STATE OF MISSOURI, *sct:*

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the judgment of said supreme court, entered of record at the April term thereof, 1877, and on the 4th day of June, 1877, in the above-entitled cause.

Given under my hand and the seal of said court, at the city of Jefferson, this 15th day of March, 1888.

[L. S.] HENRY W. EWING, *Clerk*,
By ROWAN RAY, *D. C.*

STATE OF MISSOURI, *sec:*

I, E. H. Norton, chief justice of the supreme court of the State of Missouri, hereby certify that Henry W. Ewing, whose signature appears to the within certificate, is and was at the date thereof the clerk of said court, and that said certificate is in due form.

In witness whereof I have hereunto subscribed my name, at office, in the city of Jefferson, in said State, this 15th day of March, A. D. 1888.

ELIJAH H. NORTON,
Chief Justice of the Supreme Court of Missouri.

STATE OF MISSOURI, *sct:*

I, Henry W. Ewing, clerk of the supreme court of the State
141 of Missouri, hereby certify that Hon. E. H. Norton, whose signature appears to the above certificate, is and was at the date thereof the chief justice of said court; that said signature is in his own proper handwriting, and that said certificate is in due form, and that as such full faith and credit are and of right ought to be given to all of his official acts.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said State, this 15th day of March, in the year of our Lord eighteen hundred and eighty-eight.

[L. S.] HENRY W. EWING, *Clerk*,
By ROWAN RAY, *D. C.*

142 (The following are the proofs submitted on the part of the defendants Clark County and its officers:)

A.

(*Affidavit of O. S. Callihan.*)

STATE OF MISSOURI, } ss:
County of Clark, }

KEOKUK & WESTERN RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
J. E. TODD, GEORGE HARTER, and CHARLES SEYB, Judges of the County Court of Clark County, Missouri; JOSEPH H. MILLION, Collector of the Revenue of Clark County, Missouri, *et al.*, Defendants.

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, May Term, A. D. 1889.

O. S. Callihan, being duly sworn, on his oath says that on the first day of March, A. D. 1889, he was the duly elected, legally commissioned, and qualified and acting collector of the revenue within and for Clark county, Missouri, and is now and has been since said date so acting as said collector for said county; that at no time since he became said collector as aforesaid has he commenced or threatened to commence or intended commencing any suit or suits against the Keokuk & Western Railroad Company to recover
143 any taxes for the years 1883, 1884, 1885, 1886, and 1887, or any of said years, nor has he threatened or intended to seize or distrain any property of said railroad for said taxes, nor has he taken or intended taking any steps in the direction of enforcing collection of such taxes, by suit or otherwise, until the final determination by the courts of the country (where the liability of the plaintiff to pay such taxes was *was* being litigated); that plaintiff was liable to pay same; and further deponent saith not.

O. S. CALLIHAN.

STATE OF MISSOURI, } ss:
County of Clark, }

O. S. Callihan, being duly sworn, on his oath says that he has seen and read the foregoing statement, and that the same is true.

O. S. CALLIHAN.

Subscribed and sworn to before me this — day of May, A. D. 1889. My term expires Dec. 21st, 1892.

[L. S.]

D. E. KENNEDY,
Notary Public.

144 B.

(*Affidavit of Joseph H. Million.*)

STATE OF MISSOURI, } ss:
County of Clark, }

KEOKUK & WESTERN RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
J. E. TODD, GEORGE HARTER, CHARLES SEYB, Judges of the County Court of Clark County, Missouri, and JOSEPH H. MILLION, Collector of Revenue of Clark County, Missouri, *et al.*, Defendants.

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, May Term, A. D. 1889.

Joseph H. Million, being duly sworn, on his oath says that he is one of the defendants in the above-entitled cause; that at the date of filing the application for an injunction he was and for about three years prior thereto and from that date up to the first day of March, A. D. 1889, the duly elected, commissioned, legally qualified, and acting collector of revenue within and for Clark county, Missouri; that at the time plaintiff filed said bill of complaint he had not commenced nor threatened to commence nor intended commencing any suit or suits against The Keokuk & Western Railroad Company, the above-named complainant, to recover any taxes for the years 1883, 1884, 1885, 1886, 1887, or any of said years, nor had he threatened or intended to seize or distrain any property of said railroad for said taxes, nor had he taken or intended taking any steps in the direction of enforcing collection of such taxes by suit or otherwise until the final determination by the courts of the country (where the liability of plaintiff to pay such taxes was being litigated) that plaintiff was liable to pay the same; and further despondent sayeth not.

J. H. MILLION.

145 STATE OF MISSOURI, } ss:
County of Clark, }

Joseph H. Million, being duly sworn, on his oath says the statements made in the foregoing information are true.

J. H. MILLION.

Subscribed and sworn to before me this 17th day of May, A. D. 1889.

My term expires Dec. 21st, 1892.

[L. S.]

D. E. KENNEDY,
Notary Public.

146 C.

(*Affidavit of J. E. Todd, George Harter, & Charles Seyb.*)

STATE OF MISSOURI, } ss:
County of Clark, }

KEOKUK & WESTERN RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
J. E. TODD, GEORGE HARTER, and CHARLES SEYB, Judges of the County Court of Clark County, Missouri, and JOSEPH H. MILLION, Collector of Clark County, Missouri, *et al.*, Defendants.

In the Circuit Court of the United States for the Northern Division, Eastern District of Missouri, May Term, A. D. 1889.

J. E. Todd, George Harter, and Charles Seyb, each being duly sworn, on their oath say that at the time of filing the bill of complaint in the above cause and for a long time prior thereto they were and now are the duly elected, commissioned, and qualified and acting judges of the county court of Clark county, Missouri; that they are defendants in the above-entitled cause; that at the time of the application for an injunction by plaintiff in above court they, as said judges, were not about to order that suit be brought against the complainant, The Keokuk & Western Railroad Company, to recover any taxes for the years 1883, 1884, 1885, 1886, and 1887 or any of said years, nor had they threatened or intended to make any such order, nor had they threatened or intended to seize or distrain any property of said railroad for said taxes, nor had they taken or intended taking any steps in the direction of enforcing collection of such taxes by suit or otherwise until the final determination by the courts of the country (where the liability of the plaintiff to pay such taxes was being litigated) that plaintiff was liable to pay the same; and further deponents saith not.

CHAS. SEYB.

STATE OF MISSOURI, } ss:
County of Clark, }

147 J. E. Todd, George Harter, and Charles Seyb, each being duly sworn, on his oath says that he has seen and read the foregoing statement, and the same is true.

J. E. TODD.
GEO. H. HARTER.
CHAS. SEYB.

Subscribed and sworn to before me this the 22nd day of May, A. D. 1889. My term expires Dec. 21st, 1892.

DANIEL E. KENNEDY,
[L. S.] *Notary Public.*

148 D.

(*Articles of Consolidation Between the Iowa Southern R'y Co. and the Alexandria & Bloomfield R. R. Co.*)

STATE OF MISSOURI, *ss:*

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of the articles of consolidation of the "Iowa Southern Railway Company" and the "Alexandria and Nebraska City Railroad Company," under the name and style of the "Missouri, Iowa and Nebraska Railway Company," filed May 11th, 1870, as the same appears on file and of record, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Missouri.

Done at office, in the city of Jefferson, this twenty-first day of December, A. D. eighteen hundred and eighty-eight.

[L. S.] MICH'L K. McGRATH,
Secretary of State.

Articles of Consolidation.

Articles of consolidation made and entered into this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and seventy, between the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa, and the Alexandria & Nebraska City Railroad Company, a corporation existing under the laws of the State of Missouri.

Whereas the railways respectively owned by the said companies above named constitute a continuous line of railway *from* the passage of cars from the city of Alexandria, in the State of Missouri, to a point on the Missouri river in Iowa, near Nebraska City,
149 in the State of Nebraska, and the directors of the said companies, upon mature consideration, have determined that the interests of the respective stockholders of said companies and the public interests and convenience will be greatly promoted by the union of their several roads into one road by the consolidation of the respective stocks of said companies into one common consolidated stock;

And whereas the said companies are authorized by acts of the legislatures of the said States of Iowa and Missouri to effect such union of their respective roads and to form by consolidation of their respective rights and franchises one company and have agreed so to do upon the terms and conditions hereinafter mentioned and contained:

Now, therefore, this agreement, made by and between the corporations above named, parties hereto, under and by virtue of the authority conferred upon them by the laws of the said several States, witnesseth: That the said Iowa Southern Railway Company and the said Alexandria and Nebraska City Railroad Company do

agree and each for itself doth severally agree that the said companies shall be consolidated into and form one corporation under the name and style of the Missouri, Iowa and Nebraska Railway Company, and in pursuance of the said acts of the legislatures of the said States of Iowa and Missouri the said parties hereto do hereby prescribe the following terms and conditions of the said consolidation and do respectively agree thereto and to the mode of carrying the same into effect as herein provided for:

Article 1st. The directors of the said Missouri, Iowa and Nebraska Railway Company shall be for the present thirteen in number, which said number may at any future election held by the stockholders by a resolution first passed by a two-third vote of said stockholders be reduced to nine in number, all of whom said directors shall be stockholders in the corporation. The following-named persons shall constitute the first board of directors of said Missouri,
150 Iowa and Nebraska Railway Company: James Fitzhenry, Geo. M. Ocheltree, E. Pratt Buell, Peter W. Plantz, Enoch Hinckley, William Bradley, S. A. Dickey, C. H. Howell, John A. Talbot, Jacob Rummell, C. W. Bowen, James A. Breazeale, and F. M. Drake, and shall hold their offices until the first Monday in January, A. D. 1871, as provided and in accordance with the provisions of this article.

Article 2nd. Said directors shall at their first meeting after their election elect a president and vice-president from their own number, and shall also then, or as soon thereafter as convenient, elect or appoint a secretary, treasurer, and superintendent of said company, and provide for the appointment of such other officers, engineers, clerks, agents, assistants, and other employees as they shall from time to time find necessary for the proper transaction of the business of said company.

Article 3rd. The annual election of directors shall be held on the first Monday of January of each year at Centerville, Iowa, provided if such election be not held as aforesaid it may be at any subsequent period, of which three weeks' notice shall be given in two newspapers on the line of said road, one of which shall be published at Centerville, Iowa, or wherever the principal place of business may at the time of said publication be, and the other in Missouri, unless said principal place of business should be in Missouri, in which case the publication should be in Iowa.

The persons receiving the highest number of votes shall be directors to succeed those whose term of office shall have expired.

Article 4th. Each stockholder shall be entitled to vote in person or by proxy duly authorized one vote for each share of stock he may own at the commencement of each election.

151 Article 5th. After the consolidation herein provided for is perfected stockholders in said consolidated company only by surrender and exchange of their certificates in their several companies shall be entitled to vote at any meeting of the stockholders of said consolidated company.

Article 6th. The capital stock of said Missouri, Iowa and Nebraska Railway Company shall be thirteen millions of dollars, to

be divided into one hundred and thirty thousand shares of one hundred dollars each, and the directors may increase the capitol stock thereof when necessary upon the approval of a majority of the stockholders of said consolidated company.

Article 7th. The private property of the stockholders is hereby exempted from liability for the debts of the company except to the amount of the unpaid installments of any stockholder. The stock of said corporation shall be transferable under such rules and regulations as may be deemed expedient by the board of directors.

Article 8th. Upon the surrender of the present certificates of stock now issued and outstanding of either of the companies herein consolidated a like amount of the stock at par of the consolidated company shall, without delay after its consolidation, be issued in return therefor to the holders thereof.

Article 9th. In all cases in which subscriptions or agreements with either of said companies, parties hereto, for the stock of either of said companies have been heretofore made by any person or persons or bodies politic of corporate and said subscriptions or contracts for stock yet remain unpaid or unperformed, either in whole or in part, the stock of said consolidated company shall, upon payment of said subscriptions of performance of said con-
152 tracts, be issued to the said subscribers in the same manner as the several companies, parties hereto, would have been bound to issue their stock respectively had not this consolidation taken effect.

Article 10th. All and singular the rights and franchises, privileges, real estate, depot grounds, rights of way, road-bed, railway, iron rails, engines, cars, machinery, rooling stock, debts, dues, demands, choses in action, and property of every description, name, and nature in which the said Iowa Southern Railway Company and the Alexandria and Nebraska City Railroad Company have respectively any rights, title, or interest, whether in possession, reversion, or remainder, with the appurtenances, upon the ratification of these articles of consolidation, as herein and by law provided for, and from thenceforth shall be held, owned, and control-ed by the said Missouri, Iowa and Nebraska Railway Company, their successors and assigns, as fully and completely, to all intents and purposes, as the said several companies do or can now hold, own, use, — control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Missouri, Iowa and Nebraska Railway Company.

Article 11th. All the books, vouchers, records, muniments of title, and other documents pertaining to the business or property of the said several companies, parties hereto, shall be placed in the office of the secretary of said consolidated company, and the said books, records, vouchers, and papers shall be subject to the proper exemption and inspection of all persons interested therein, who shall have the same access thereto as if the same had remained in the office of the original companies.

Article 12th. The principal place of transacting the business of the consolidated company shall be at Centerville, Appanoose county,

Iowa, which place of business may be changed to any other
153 point on said line at any time in accordance with the provisions of article sixteen of the articles of incorporation of said Iowa Southern Railway Company.

Article 13th. The line of the consolidated railway shall extend continuously from the city of Alexandria, Clark county, Missouri, on the Mississippi river, its eastern terminus, as the same is now located and partially graded, to Centerville, in Appanoose county, Iowa; thence west to the Missouri river as contemplated by the charter of the Iowa Southern Railway Company, and the said consolidated company shall complete and put in operation said line of railway from the city of Alexandria, Missouri, to Centerville, Iowa, and from thence westward to the Missouri river as soon as practicable and shall continue to maintain and operate said railway as a first-class road *at* from and between the said termini throughout its entire length during the corporate existence of the said consolidated company.

Article 14th. The said consolidated company shall assume and fulfill and finally settle, pay, and dismiss all debts owing and all contracts and agreements or other obligations entered into by either of said companies of every kind and nature, legal and equitable.

Article 15th. In order to facilitate the settlement of all claims, *b*ebts, or obligations of either of the companies parties hereto and properly protect the interest of all parties interested, it is agreed that an auditing committee from each of said companies parties hereto consisting of three members each shall be appointed to audit and allow all just claims against these said respective companies or such amounts thereof as they shall find just and equitable. The said committee for the auditing of the claims against the Iowa Southern Railway Company shall consist of C. W. Bowen, Jacob Rummel, and John A. Talbot, and the said committee for auditing of the
154 claimes of the Alexandria and Nebraska City Railroad Company shall consist of James Fitzhenry, Geo. M. Ochiltree, and Enoch Hinckley.

Article 16th. The consolidated company, in order to raise money necessary to construct, complete, equip, and operate the line of railway formed by this consolidation and every part thereof, shall have the right and power to borrow money to an amount not exceeding two-thirds of its capital stock and to issue the bonds of the consolidated company therefor and to secure the payment of the same by a first mortgage or deed of trust on all the property, rights, and franchises of the said consolidated company lying between the Mississippi and Missouri river in the States of Missouri and Iowa.

Article 17th. It is agreed that the articles of consolidation shall be submitted to the stockholders of each of said companies parties hereto at a meeting thereof called seperately for the purpose of taking the same into consideration. Due notice of the time and place of such meeting and the object thereof shall be given. The time of such meeting of the stockholders of the Iowa Southern Railway Company shall be on the 23rd day of April, A. D. 1870, at the place and town of Centerville, Appanoose county, Iowa. The time of such

meeting of the stockholders of the said Alexandria and Nebraska City Railroad Company shall be on the 2nd day of May, A. D. 1870; the place, the city of Alexandria, in the State of Missouri.

Article 18th. In witness whereof the corporate seals of the respective companies parties to this agreement have been hereunto affixed in quadruplicate by order and in the presence of the directors of each of said companies duly convened, a quorum of each of the said boards of directors being so present and assenting thereto, and is attested by their respective signatures hereto on behalf and by order of said boards of directors, and the president of each of
155 said companies have also at the same time and in behalf of the said respective companies hereto affixed their names in virtue of a resolution of said several boards of directors passed at the respective meetings thereof.

[L. S.] IOWA SOUTHERN RAILWAY COMPANY,
By F. M. DRAKE, *President.*

Attest: C. W. BOWEN, *Secretary.*

F. M. DRAKE,
C. W. BOWEN,
WM. BRADLEY,
J. A. BREAZEALE,
JOHN A. TALBOT,
S. DICKEY,
JACOB RUMMELL,
C. H. HOWELL,
Directors of the Iowa Southern Railway Company.

ALEXANDRIA & NEBRASKA CITY R. R. CO.,
By E. PRATT BUELL, *President.*

Attest: P. W. PLANTZ, *Secretary.*

E. PRATT BUELL,
G. M. OCHILTREE,
E. HINKLEY,
S. M. YOUNG,
P. W. PLANTZ,
Directors of the Alexandria and Nebraska City Railroad Company.

I, C. W. Bowen, secretary of the Iowa Southern Railway Company, do hereby certify that in pursuance of notices published in the Loyal Citizen, a newspaper published in the town of Centerville, Appanoose county, Iowa, the principal office and place of business of said company; also in a newspaper published in the town of Bloomfield, in the county of Davis and State of Iowa, through which said counties the line of said company is established and the road is to run, the stockholders of said company met at said company's office, in the town of Centerville aforesaid, on Saturday, the 23rd day of April, 1870, to take into consideration the

within foregoing agreement, and they then and there proceeded to vote by ballot for the adoption or rejection of said agreement;
156 that at said meeting 8,755 votes were cast, each vote representing one share of stock; that all of the 8,755 votes so cast were cast in favor of the adoption of said agreement, and that none of said votes were cast against its adoption, and that the entire number of shares of stock of said company is 10,280, and that therefore the stock so voted as aforesaid in favor of said agreement is more than four-fifth- of the entire stock subscribed of the company.

In witness whereof I have hereunto set my hand and affixed the seal of the said company, at Centerville, Iowa, this twenty-third day of April, A. D. 1870.

[L. S.] C. W. BOWEN,
Secretary of the Iowa Southern Railway Company.

I, P. W. Plantz, secretary of the Alexandria and Nebraska City Railroad Company, do hereby certify that in pursuance of the notice published in the Alexandria Commercial, a newspaper printed and published in the city of Alexandria, Clark county, in the State of Missouri, the principal office and place of business of said company being in the said city of Alexandria, the stockholders of said company met at the Pearl Street house, in said city of Alexandria, on Monday, the 2nd day of May, 1870, to take into consideration the within and foregoing agreement, and they then and there proceeded to vote by ballot for the approval or disapproval of said agreement; that at said meeting 4,873 votes were cast, each vote representing one share of stock; that all of the 4,873 votes so cast were cast in favor of the approval and adoption of said agreement, and that none of said votes were cast against its approval and adoption, and that the entire number of shares of stock of said company does not exceed 6,750, and that therefore the stock so voted as aforesaid in favor of said agreement is more than two-thirds of the entire stock of the company.

And I further certify that on the same day and immediately after the meeting of said stockholders had adjourned the board
157 of directors of the Alexandria and Nebraska City Railroad Company met, as required by law, to carry the said vote and agreement into effect, and did adopt the name of the "Missouri, Iowa and Nebraska Railway Company" as the corporate name for the consolidated company and did call in the certificates of the stock outstanding in the said Alexandria and Nebraska City Railroad Company to be exchanged for the stock in the said new company by ordering and directing notice to be given to the holders of said outstanding certificates of stock to present the same to P. W. Plantz, the secretary of said Alexandria and Nebraska City Railroad Company, to be so exchanged on or before the first day of July, 1870.

In witness whereof I have hereunto set my hand and affixed the seal of the Alexandria and Nebraska City Railroad Company this third day of May, A. D. 1870.

P. W. PLANTZ,
Secretary of the Alexandria and Nebraska City Railroad Company.

Filed May 11th, 1870.

FRANCIS RODMAN,
Secretary of State.

158 E.

(*Copy of Mortgage of M., I. & N. R'y Co. to Farmers' Loan & Trust Co., June* 1, 1870.)

This indenture, made and entered into this first day of June, in the year of our Lord one thousand eight hundred and seventy, by and between the Missouri, Iowa and Nebraska Railway Company, a corporation duly incorporated, organized, and existing under and by virtue of the laws of the States of Missouri and Iowa, party of the first part, and the Farmers' Loan and Trust Company of the city of New York, trustees for certain creditors, holders and owners of the bonds of said railway company, party of the second part, witnesseth: That whereas the said party of the first part owns and possesses the power and by virtue of the laws of the States of Missouri and Iowa to construct, maintain, and operate a continuous line of first-class railway from the city of Alexandria, on the Mississippi river, in the State of Missouri, to a point on the Missouri river, in the State of Iowa, near Nebraska City, in the State of Nebraska; and whereas the said party of the first part has commenced the construction of said line of railway between said points and has a large portion of said line graded, with the streams and culverts bridged and the cross-ties purchased and received along the line thereof and ready for the laying of track thereon; and whereas the said party of the first part, by an order and by resolutions duly passed by its board of directors at a regular and lawful meeting held at the office and principal place of business of said company, in Centerville, Iowa, on the 13th day of May, A. D. 1870, has decided, for the purpose of obtaining funds to complete the said line of railway and the purchase of iron and other materials to be used therein and equipments for furniture, motive power, rolling stock, and machinery for the said railway, to make, execute, and deliver its six thousand bonds of and for the sum of one thousand
159 dollars each and bearing date June 1st, A. D. 1870, and to sell and dispose of the same and thereby become indebted to divers persons, bodies politic or corporate, who shall become the holders thereof in the just and full sum of six million dollars, and which bonds and indebtedness shall have a priority of lien upon all the corporate property, railway, and franchises of every kind and description now acquired and owned or to be hereinafter acquired and owned by the party of the first part, and the payment thereof, together with the interest accruing thereon, to be secured by deed of trust in first mortgage on all the corporate property, railway, and franchises of the said party of the first part as aforesaid and as hereinafter set forth, and that a sinking fund of thirty thousand dollars annually to provide for the payment of said bonds shall be formed by setting apart on the first day of June, A. D. eighteen hundred and seventy-five, and each and every year thereafter, on

the first day of June, the sum of thirty thousand dollars. This sinking fund shall be kept and invested by the commissioners, one of whom shall be the president of the company, and the other two shall be members of the board of directors of said company. They shall invest the said fund in the bonds of said railway company: otherwise, at the discretion of the commissioners, in stocks of the United States; said bonds to be payable in the city of New York on the first day of June, one thousand nine hundred and ten, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually in gold, free from United States income tax, in the city of New York on the first days of June and December in each and every year, in accordance with the coupons to be thereto annexed; said bonds are to be numbered consecutively from one to six thousand, both inclusive, and are to stand equally and ratably secured according to their respective amounts, without preference of one over the other, and all of which are to be in the form following, to wit:

160 UNITED STATES OF AMERICA, *States of Missouri and Iowa.*

No. —. $1,000.

Missouri, Iowa and Nebraska Railway Company first-mortgage, forty-year seven per cent gold-bearing sinking-fund bond.

Know all men by these presents, that the Missouri, Iowa and Nebraska Railway Company is indebted to the Farmers Loan and Trust Company of the city of New York or bearer, in the sum of one thousand dollars which said company promises to pay to them or the bearer hereof, on the first day of June one thousand nine hundred and ten in the city of New York, with interest thereon from the first day of June A. D. eighteen hundred and seventy, until the said sum shall become fully due, and be paid at the rate of seven per centum per annum payable semi-annually, in gold free from United States income tax, in the city of New York, on the first days of June and December in each year, on the presentation and surrender of the annexed coupons as they severally become due. And in case of non-payment of any half yearly installments of interest which shall have become due and payable, and payment shall have been demanded, if such default shall continue for six months after the maturity of the said installment, the principal of this bond shall become due in the manner and with the effect specified in the deed of trust in first mortgage securing such payment.

This bond is one of an issue of six thousand bonds of like tenor date and amount, numbered consecutively from one to six thousand, both numbers inclusive, and amounting in the aggregate to six million dollars, and has a special first lien on all of the railroad property, equipments and franchises of the said company, and the full and final payment of which and the interest thereon is secured by deed of trust in first mortgage, dated the first day of June eighteen hundred and seventy, duly executed and recorded in the

proper offices in the States of Missouri and Iowa, conveying to the Farmers' Loan and Trust Company of the city of New York,
161 in trust all the corporate property, railway and franchises of every kind and description now acquired and owned, to be hereafter acquired and owned, by said company within the States of Missouri and Iowa, together with all and singular the equipments, appurtenances, lands and tenements therein mentioned, as by reference thereto will more fully appear. The holder hereof will also be entitled to the benefit and security of a sinking fund of thirty thousand dollars, provided for and described in said deed of trust, to be set apart on the first day of June 1875 and each and every year thereafter, for investment, out of the earnings of said company, for the redemption of the six million dollars secured by said deed of trust. This bond shall be transferable by delivery, or it may be registered as to its ownership on a registry to be kept by the company, and being so registered it shall then be transferable only on the books of the company, until released from such registry on said books by its owner. This bond shall not become obligatory until it shall have been authenticated by a certificate annexed to it, duly signed by the trustees.

In witness whereof, the said railway company has caused its corporate seal to be hereunto affixed, and the same to be attested by the signature of its president and secretary; and has also caused the coupons hereto annexed to be signed by its secretary on this first day of June in the year of our Lord one thousand eight hundred and seventy.

——— ———, *President.*
——— ———, *Secretary.*

I hereby certify that this bond is one of the series of six thousand bonds described in and secured by the deed of trust in first mortgage above mentioned, and that said deed of trust in first mortgage securing the same has been duly executed, recorded, and delivered to me.

——— ———, *Trustee.*

With seventy-nine coupons for the semi-annual interest to become due thereon, substantially in the following form and
162 differing as to the term and time of payment only, to be annexed hereto, to wit:

$35. $35.

The Missouri, Iowa and Nebraska Railway Company will pay the bearer hereof thirty-five dollars in gold in the city of New York on December 1st, 1870, being semi-annual interest on bond No. —.

C. W. BOWEN, *Secretary.*

Now, therefore, this indenture witnesseth that said party of the first part, for the purpose and in order to fully secure the payment of said sum of money mentioned in said bonds and each and every of them, with the interest thereon, according to the true intent and

meaning thereof, and in consideration of the premises and of one dollar paid *by* them by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, transfer, and confirm, unto the Farmers' Loan and Trust Company, the party of the second part, their successor or successors, in trust and for the uses and trusts hereby created, all the right, title, and interest of the party of the first part, acquired in any and all manners whatever, of, in, and to all and singular the pieces or parcels of land situated, lying, and being in the States of Missouri and Iowa, now purchased and acquired or which may at any time hereafter — purchased and acquired for the railway of the said party of the first part, extending from the city of Alexandria, on the Mississippi river, in the State of Missouri, through the counties of Clark and Scotland, in the said State of Missouri, and the counties of Van Buren, Davis, and Appanoose, in the State of Iowa, to the town of Centerville, in said county of Appanoose, and thence west, through the said county of Appanoose and the counties of Wayne, Decatur, Ringgold, Taylor, Page, and Fremont, in the State of Iowa, to a point on the Missouri river, in the State of Iowa,
163 near Nebraska City, in the State of Nebraska, and all and singular the railroad now surveyed and being constructed or that may be hereafter constructed and leading from the Mississippi to the Missouri rivers and lying and being in the said States of Missouri and Iowa, together with all and singular the right of way for said road now belonging or to belong to the party of the first part, and also the right of said party of the first part to construct and maintain along said route a railroad, as well as other rights, privileges, and franchises belonging to said party of the first part in, upon, or pertaining to said railroad, including its road-bed, made or to be made, gradings, embankments, excavations, sidings, culverts, bridges, cross-ties, superstructures, track or tracks, iron, rails, fences, stations and station-houses, depot grounds, and all the work, materials, and operations for the construction of said railroad now made, done, or acquired or which may at any time be done or acquired by the said party of the first part and which in anywise appertains or shall ap-ertain to said railroad, and all and singular the buildings, machine shops, engine-houses, depots, turnouts, wood and water stations, water tanks, and other buildings or structures, improvements, and constructions of every nature and description now belonging or to belong to the said party of the first part and in anywise appertaining or to appertain to said railroad, together with all and singular its alienable franchises, emoluments, income, and advantages, tenements, and hereditaments and appertenances, and all and singular the equipments or furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description now belonging to, owned, possessed, or acquired or hereafter to be owned, possessed, or acquired *or hereafter to be owned, possessed, or acquired* by the party of the first part, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all lands and real estate to

which said party of the first part may become entitled through or be reason of the construction of said railroad, and all the
164 estate, right, title, and interests, property, possessions in law or in equity of the said party of the first part now acquired or hereafter to be acquired, together with all and singular the rights, privileges, corporate property, and franchises of said railway company and each and every part and parcel hereof, and all the appurtenances to the above-described premises belonging or in anywise appertaining; to have and to hold the said granted premises unto the said party of the second part and to their successor or successors forever, in trust, nevertheless, and for the use and purposes in this indenture expressed and declared:

Provided always, and these presents are upon the express condition, that if the said party of the first part and its successors shall well and truly pay or cause to be paid to the holders of its said bonds so to be issued as aforesaid and each and every of them the principal sums of money and the interest thereon as herein mentioned and set forth, and shall well and truly keep, fulfil, and perform all and singular its covenants, promises, stipulations, and agreements as therein and herein contained according to the true intent and meaning thereof, that then and from thence these presents and estate hereby granted shall cease, determine, and be null and void, and the right to the premises hereby conveyed shall revert to and revest in said party of the first part without any acknowledgement of satisfaction, reconveyance, re-entery, or other act.

And this indenture further witnesseth that the premises hereby granted, bargained, and described and each and every part and parcel thereof, with the appurtenances, are granted, bargained, and conveyed unto them, the said party of the second part, and their successor or successors in the trust hereby created upon the trust terms, conditions, and agreements and to and for the uses, interest, and purposes following—that is to say, that the actual possession, use, management, and control of the said railroad and premises hereby granted shall be and remain with the said party of
165 the first part without any molestation of the said party of the second part or their successor or successors in the trust hereby created so long as its said bonds shall remain without default or forfeiture and said party of the first part shall perform and keep the covenants and stipulations therein or herein contained; and the said party of the first part, for itself and its successors, doth covenant and agree to pay unto the holders of the said bonds respectively the said principal sums of money and interest thereon as therein mentioned and expressed; and if any default should be made in the payment of said interest or any part thereof on the day whereon the same is made payable, as expressed in said bonds and coupons thereto annexed, and should the same remain unpaid and in arrears for the space of six months, then and from thenceforth—that is to say, after the lapse of the said six months—the said principal sums named in said bonds, with all arrearages of interest thereon, shall, at the option of the holder or holders thereof of more than one-half the amount of said bonds then outstanding, expressed

in writing to the said party of the second part, their successor or successors, become and be due and payable immediately thereafter, although the period therein limited for the payment thereof may not have then expired, anything therein or herein contained to the contrary thereof in anywise notwithstanding; and if any default should be made in the payment of the principal sums named in said bonds or the interest that may grow due thereon or any part of either the said principal or interest on any day whenever the same is made payable as therein mentioned and expressed, and should the same remain unpaid for the space of six months thereafter, or if the said party of the first part shall fail well and truly to keep, fulfil, and perform all and singular all its other covenants, promises, and stipulations therein or herein contained according to the true intent and meaning thereof, that then and from thenceforth it shall be lawful for and shall be and become the duty of the said party of the second part, their successor or successors
166 in the said trust, upon the written request of the holders of more than one-half of the amount of said bonds then outstanding, to enter into and upon and take possession of all and singular the said premises, property, and franchises of every nature and description herein granted and conveyed, and as attorneys-in-fact or agent of the said party of the first part, by themselves, their agent or agents or substitutes duly constituted, have, use, enjoy, and operate the same, making from time to time all needful repairs, alterations, and additions, and, after deducting the expenses of such use, repairs, alterations, and additions and the costs and charges of such taking possession and a reasonable compensation for the services of said trustees on such taking possession and while so in possession, apply the proceeds thereof to the payment of the principal and interest of said bonds issued hereunder remaining unpaid and which may have become due, and upon the written request of the holders of more than one-half of the amount of said bonds which shall then be outstanding and unpaid, and in which case default shall have been made in any manner as aforesaid, it shall be lawful and become the duty of the said party of the second part, their successor or successors, to sell or cause to be sold the said premises, real and personal estate, rights and franchises, and property of every nature and description hereby granted and all the benefits and equity of redemption of the said party of the first part, its successors or assigns, therein at public auction, in the city of Keokuk, in the State of Iowa, or in the city of New York, as the said trustees, their successor or successors, may elect, and after first giving twelve weeks' notice of said sale by publishing the same in at least one daily newspaper published in the city of New York and in two daily newspapers published in the city of Keokuk, and on such sale, as the attorney of the said party of the first part for that purpose by these presents duly constituted and appointed, to make, execute, and deliver to the purchaser or purchasers thereof a good
167 and sufficient deed or deeds of conveyance in law for the same in fee simple, which shall be forever a perpetual bar, both in law and equity, to the said party of the first part, its successors and

assigns, and all other persons, associations, bodies corporate or politic claiming or to claim by, from, or under them or either of them of all rights, interests, or claims of, in, or to the same premises, rights, or franchises or any part or parcel thereof. The amount of the bid or purchase-money of said sale may be paid and satisfied in whole or in part by the outstanding bonds or any of them issued hereunder, and the same shall be taken and received in whole or in part payment and satisfaction by the party of the second part, their successor or successors, according to their value, to be ascertained or determined by the net amount arising from such sale as compared with the amount of outstanding bonds issued hereunder as aforesaid; and the said party of the second part, after deducting from the proceeds of such sale the costs, charges for advertisements, and expenses thereof of said sale and of managing said property, shall apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of said outstanding mortgage bonds issued hereunder and not used in payment of said bid and purchase as aforesaid, — shall pay over the remainder or overplus of the purchase-money — proceeds of such sale, if any there shall be, to the party of the first part, its successor or assigns, and all other persons, associations, bodies corporate or politic claiming or to claim the premises or any part thereof by, from, or under them or either of them; and the said party of the first part doth hereby covenant for itself and its successors that in no case shall it or they claim or take advantage of any stay, valuation, or appraisement laws, all of which are expressly waived, or obtained or apply for any injunction or stay of proceedings or any other process to prevent, postpone, or delay such entry, use, enjoyment, operation, or sale as aforesaid, and in case of any such taking possession or proceedings to sell the said mortgage- premises for default
168 in payment of interest only, if the said party of the first part, before the said bonds shall become payable and before such sale shall be made, shall pay and satisfy all interest then in arrears on any of said bonds, and shall also pay and discharge all costs, expenses, and disbursements and pay all said reasonable compensation then and therefore incru-ed by reason of such default, the said trustees, upon evidence thereof made to their satisfaction, shall thereupon discontinue such proceedings and restore possession of the said mortgaged premises to the said party of the first part, to be held subject to these presents in like manner as if said default had not happened; and the said party of the first part further covenants and agrees for itself and its successors and all and every other person or persons, associations, bodies politic or corporate whatsoever or whomsoever lawfully or equitably claiming or deriving any estate, right, title, or interest of, in, and to the premises hereby granted or intended so to be or any part thereof by, from, under, or in trust for it or them, upon the reasonable request of the said party of the second part, their successor or successors, to make, execute, do, and deliver, or cause to be made, done, executed, and delivered, all and every such further and other reasonable acts, conveyances, and assurances in the law, and par-

ticularly for the conveyance of all lands, depot grounds, rights of way, and such other property, including any lands that may be granted or donated to aid the construction of said railroad or may in any manner be hereafter acquired by the party of the first part for the better and more effectually vesting and conforming the premises hereby intended to be granted in and to the said party of the second part, their successor or successors, for the uses, intents, and purposes herein set forth and declared as by the said party of the second part, their successor or successors, or their counsels learned in the law shall be reasonably advised, divised, and required, and also that it hath not *been* made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever whereby
169 or by means whereof the above-mentioned and described premises or any part or parcel thereof now or at any time hereafter shall or may be impeached, discharged, or incumbered in any manner or way whatsoever. The said party of the first part doth hereby, for itself and its successors, further covenant and agree to and with the said party of the second part that the amount of bonds issued hereunder shall not exceed in the aggregate the sum of six million dollars upon the whole line of said railway from the Mississippi river to said point on the Missouri river, a distance of about three hundred miles, and that this trust and the security hereby intended shall extend to such mortgage bonds only as shall be certified and countersigned by the trustees aforesaid, their successor or successors, and the said trustees shall certify and countersign the whole or any part of said six thousand bonds at any time when requested so to do by the party of the first part, the same being first signed by the president and secretary and sealed with the corporate seal of the said party of the first part. It is also especially agreed and understood that all of said bonds to be issued hereunder shall be upon an equality so far as regards the security for the payment thereof by these presents, notwithstanding the same may be issued at different times, and none of said bonds shall be entitled to priority, and these presents and everything herein contained shall have effect and enure as a security for said bonds equally and without preference, whether at one and the same or at different times. It is also mutually agreed that the said party of the second part, their successor or successors in the trust hereby created, shall not be responsible at any time for the default or misconduct of his or their agents to be employed by him or them in his or their discretion, and shall be held bound to the exercise of ordinary and reasonable care and diligence only in the management thereof, and that the said parties of the second part and their successors in the trust hereby created shall be entitled to receive proper and reasonable
170 compensation for every labor and service performed and the expense, disbursements, and damages incrued by him or them in the discharge of their said trust in case they shall take possession of said premises or any part thereof or manage the same, and shall not in any manner be liable or responsible for any loss or damage

unless the same shall happen by gross neglect or wilful malfeasanse on their part, and also that in case of the death, resignation, or other disability of the said party of the second part, their successor or successors, from time to time hereafter, in case of the vacancy in the trusteeship from any cause, it shall be competent and lawful for the said party of the first part or its successors to apply to any court of record in the State- of Iowa or Missouri or of the United States of adequate jurisdiction to appoint a successor or successors to said party of the second part to fill the vacancy so made in said trust hereby created, and upon the appointment and acceptance thereof the person or persons, body politic or corporate, so appointed shall become and be vested for the uses and interests and purposes herein set forth and declared with all the estate, rights and powers, title and interest, in and to the said party of the second part without any other or further assurances or conveyances of the same, and shall perform all the duties of trustee in like manner as if he or they had been named in this instrument as trustee.

And the said party of the first part hereby further covenants and agrees with the said party of the second part and their successors and with the holders of each and all of the said issue of six millions of dollars of bonds which may be issued that the said party of the first part will create and make a sinking fund for the redemption of such bonds and each of them by setting aside and depositing with the commissioners to be appointed by the party of the first part for the purpose, from and after the first day of June, in the year one thousand eight hundred and seventy-five, and annually thereafter until the maturity of said bonds, the sum of thirty
171 thousand dollars ($30,000); such sinking-fund moneys shall from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds so issued or in bonds of the Government of the United States, and the money accuring on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into said sinking fund and compounded therein continually and reinvested in like manner with the other money of said fund; that the board of directors of said railway company, party of the first part, shall have entire control over the management of said sinking fund and every person in charge or connected with the same; shall from time to time direct in what said bonds or securities it shall be invested and at what prices or rates and how it shall be kept and the manner of keeping the accounts thereof, and shall require ample security to be given to them by any person in charge of its moneys or its securities or bonds for safe keeping. Every bond of the said issue of six millions of dollars which may be purchased and held by said sinking fund shall remain in full force until the whole of such issue shall have been matured or shall have been so absorbed or otherwise redeemed by said party of the first part, and the interest on such bonds held by said sinking fund shall be paid by said railway company regularly as the interest on its other similar bonds is paid.

In witness whereof the said party of the first part hath caused its

corporate seal to be affixed hereunto and these presents to be signed by its president and secretary the day and year first above written.

MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY,

[L. S.] By F. M. DRAKE, *President.*

C. W. BOWEN,

Secretary of the Missouri, Iowa and Nebraska Railway Company.

STATE OF IOWA, *Appanoose County,* } *ss:*

171*a* Be it remembered that on this 28th day of June, in the year of our Lord one thousand eight hundred and seventy, before the undersigned, K. P. Morrison, clerk of the district court within and for said county and State, duly authorized by law to take acknowledgements of deeds, etc., personally appeared F. M. Drake, who is personally to me known to be the same person whose name is subscribed to the above and foregoing instrument of writing as president of the Missouri, Iowa and Nebraska Railway Company, party hereto, and acknowledged the said instrument to be the act and deed of the said Missouri, Iowa and Nebraska Railway Company by him, as president thereof, subscribed for the same; and also at the same time and place personally appeared before me C. W. Bowen, who is well known to me to be the same person whose name is subscribed to the foregoing instrument of writing as secretary of the Missouri, Iowa and Nebraska Railway Company, as party thereto, and acknowledged that he executed the said deed as and for the act and deed of the said Missouri, Iowa and Nebraska Railway Company for the uses and purposes mentioned in said instrument.

In witness whereof I, K. P. Morrison, clerk of the said court, have hereunto set my hand and affixed the seal of the district court aforesaid this day and year last above written.

[L. S.] K. P. MORRISON,

Clerk of the District Court of said County.

The bonds herein mentioned will be duly stamped when issued with the U. S. revenue stamps of one dollar each.

Filed for record July 1st, 1870, at 2 o'clock p. m.

H. M. MILLER, *Recorder.*

Certificate—Hannibal Printing Company, Hannibal, Mo.

STATE OF MISSOURI, *County of Clark,* } *ss:*

I, I. C. Weaver, recorder of deeds in and for said county, hereby certify that the above is a true copy of the original deed of
172 trust as the same appears of record in my office.

Witness my hand as recorder and the seal of my office.

Done at office, in Kahoka, this 24th day of April, 1889.

[L. S.] I. C. WEAVER, *Recorder.*

173 F.

(*Copy of Mortgage of the M., I. & N. R'y Co. to Farmers' Loan & Trust Co., Jan'y 6, 1879.*)

This indenture, made and entered into this sixth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, by and between the Missouri, Iowa and Nebraska Railway Company, a corporation duly organized under and by virtue of the laws of the States of Iowa and Missouri, party of the first part, and the Farmers' Loan and Trust Company of the City of New York, trustees for certain creditors, holders, and owners of the bonds of said railway company, party of the second part, witnesseth:

That whereas the said party of the first part owns and possesses the power, under and by virtue of the laws of the States of Missouri and Iowa, to extend its line of railway from the vicinity of Alexandria, in the county of Clark and State of Missouri, through the said county of Clark, in said State of Missouri, and the county of Lee, in said State of Iowa, to a connection with the iron bridge spanning the Mississippi river at the city of Keokuk, in said county of Lee and State of Iowa, and to construct, maintain, and operate the same; and whereas the said party of the first part has purchased and now owns a one-half interest in the superstructure and approaches thereto of the railroad and wagon bridge spanning the Des Moines river, together with the right of use of the superstructure of said bridge at a point known as Buena Vista;

And whereas the said party of the first part did on the first day of June, A. D. 1870, make and fully execute an indenture called a deed of trust in first mortgage to said party of the second part on all the corporate property, railway, and franchises of every kind and description then acquired and owned or to be thereafter acquired and owned by the party of the first part in the States of Missouri and Iowa, for the purpose of securing its six thousand bonds
174 of and for the sum of one thousand dollars each, and bearing date June 1st, A. D. 1870, and payable in the city of New York on the first days of June, one thousand nine hundred and ten, together with interest thereon at the rate of seven (7) per cent. per annum, payable semi-annually in gold, free from United States income tax, in the city of New York, on the first days of June and December in each and every year, in accordance with the coupons thereto annexed; said bonds numbered from one to six thousand, both inclusive, and all of which are in the form following, to wit:

"*Forty-Year Gold-Bearing Seven Per Cent. First-Mortgage Sinking-Fund Bond.*"

Missouri Iowa and Nebraska Railway Company.

Know all men by these presents, That the Missouri Iowa and Nebraska Railway Company is indebted to the Farmers' Loan and Trust Company of the City of New York or bearer in the sum of one thousand dollars which said company promises to pay to them or

the bearer hereof on the first day of June one thousand nine hundred and ten in the city of New York, with interest thereon from the first day of June A. D. eighteen hundred and seventy, until the said sum shall become fully due and be paid at the rate of seven per cent. per annum payable annually in gold, free from United States income tax in the city of New York on the first days of June and December in each year on presentation and surrender of the annexed coupons as they severally become due, and in case of the non-payment of any half yearly installment of interest which shall have become due and payable, and payment shall have been demanded, if such default shall continue for six months after the maturity of the said installment, the principal of this bond shall become due in the manner and with the effect specified in the deed of trust in first mortgage securing such payment.

This bond is one of an issue of six thousand bonds of like tenor and date and amount numbered consecutively from one to
175 six thousand both numbers inclusive and amounting in the aggregate to six million dollars and has a special first lien on all of the railroad property equipments and franchises of the said company and the full and final payment of which and the interest thereon is secured by deed of trust in first mortgage, dated the first day of June eighteen hundred and seventy duly executed and recorded in the proper offices in the States of Iowa and Missouri conveying to the Farmers' Loan and Trust Company of the City of New York all the corporate property railway and franchises of every kind and description now acquired and owned — to be hereafter acquired *acquired* and owned, by said company within the States of Missouri and Iowa together with all and singular the equipments appurtenances lands and tenaments therein mentioned as by reference thereto will more fully appear.

The holder hereof will also be entitled to the benefit and security of a sinking fund of thirty thousand dollars provided for and described in said deed of trust to be set apart on the first day of June 1875 and each and every year thereafter for investment out of the earnings of said company for the redemption of the six million dollars secured by said deed of trust.

This bond shall be transferable by delivery or it may be registered as to its ownership on a registry to be kept by the company and being so registered it shall then be transferable only on the books of the company until released from such registry on said books by its owner.

This bond shall not become obligatory until it shall have been authenticated by a certificate annexed to it duly signed by the trustees.

In witness whereof, the said railway company has caused its corporate seal to be hereunto affixed and the same to be attested by the signature of its president and secretary and has also caused the coupons hereto annexed to be signed by its secretary on this
176 first day of June in the year of our Lord one thousand eight hundred and seventy.

—— ——, *President.*

—— ——, *Secretary.*

Certificate.

Missouri, Iowa and Nebraska Railway Company seven per cent. gold-bearing first-mortgage sinking-fund bond, due 1910.

I hereby certify that this bond is one of a series of six thousand bonds described in and secured by the deed of trust in first mortgage within mentioned, and that said deed of trust in first mortgage securing the same has been duly executed, recorded, and delivered to me—

President of Farmers' Loan and Trust Co., trustee, with seventy-nine coupons for the semi-annual interest to become due thereon, substantially in the following form and differing as to the term and time and payment only, to be annexed thereto, to wit:

Form of Coupon.

The Missouri, Iowa and Nebraska Railway Company will pay the bearer hereof thirty-five dollars in gold, in the city of New York, on —— —, 18—, being semi-annual interest on bond No. —.

—— ——, *Secretary.*

And whereas, since the execution of said deed of trust and the issuance of said six thousand bonds, said party of the first part has constructed and put in operation its line of railroad from the city of Alexandria, in the State of Missouri, to the town of Centerville, in the State of Iowa; and whereas said line of railway as so constructed from Alexandria to Centerville passes through the county of Schuyler, in the State of Missouri, which said Schuyler county is not particularly designated in said deed of trust in first mortgage of June 1st, 1870, aforesaid; and whereas the said party of the first part, by an order and by resolution duly passed by its board of directors at a regular and lawful meeting held at the office
177 and principal place of business of said company in Centerville, Iowa, on the 6th day of January, A. D. 1879, has decided, for the purpose of more fully securing its six thousand bonds, of and for the sum of one thousand dollars each, aforementioned and described, and amounting in the aggregate to the sum of six million dollars, to make and deliver to said party of the second part an additional deed of trust in mortgage wherein said bonds and indebtedness shall have a priority of lien upon all the corporate property, railway, and franchises of every kind and description now acquired and owned or to be hereafter acquired and owned by the party of the first part in the said county of Schuyler, in the State of Missouri, and the said extension from the vicinity of the city of Alexandria through the county of Clark, in said State of Missouri, and the county of Lee, in said State of Iowa, to the said Mississippi river bridge, at the said city of Keokuk, in the said county of Lee and State of Iowa, including the one-half interest in the said railroad and wagon bridge across the Des Moines river, as aforedescribed:

Now, therefore, this indenture witnesseth that said party of the

first part, for the purpose and in order to more fully secure the payment of the said sum of money mentioned in said bonds and each and every one of them, with the interest thereon, according to the true intent and meaning thereof, and in consideration of the premises and of one dollar paid by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, transfer, and confirm, unto the Farmers' Loan and Trust Company, the party of the second part, their successor or successors, in trust and for the uses and trust hereby created, all the right, title, and interest of the party of the first part acquired in any and all manner whatever of, in, and to all and singular the pieces or parcels of land situated, lying, or being in the said counties of Schuyler and Clark, in the State of Missouri, and Lee, in the State of Iowa, now purchased and acquired or which may at any time hereafter be purchased and acquired
178 *and acquired* for the railway of the said party of the first part, and all and singular the railroad now surveyed and being constructed or that may hereafter be surveyed and constructed, together with all and singular the right of way for said road now belonging or to belong to the party of the first part, and also the rights of said party of the first part to construct and maintain along said route through said counties of Schuyler and Clark, in the State of Missouri, and Lee, in the said State of Iowa; as well as all other rights, privileges, and franchises belonging to said party of the first part in, upon, or pertaining to said railroad, including its road-bed, made or to be made, gradings, embankments, excavations, sidings, culverts, bridges, cross-ties, superstructures, track or tracks, iron, rails, fences, stations and station-houses, depot grounds, and all other work, materials, and operations for the construction of said railroad now made, done, or acquired or which may at any time be made, done, or acquired by the said party of the first part and which in anywise appertains or shall appertain to said railroad, and all and singular the buildings, machine-shops, engine-houses, depots, turnouts, wood and water stations, water tanks, and all other buildings or structures, improvements, and construction of every nature and description now belonging or to belong to the said party of the first and in anywise appertaining or to appertain to said railroad, together with all and singular its alienable franchises, emoluments, income, and advantages, tenements, hereditaments, and appertenances, and all and singular the equipments, furniture, motive power, rool-ing stock, engin-s, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description now belonging to, owned, possessed, or acquired or hereafter to be owned, possessed, or acquired by the party of the first part, and the reversion and reversions, remainder and remainders, rents, issues, and proffits thereof, and all land and real estate to which said party of the first part may become entitled through or by reason of the construction of said railroad through said counties of Schuyler and Clark,
179 in the State of Missouri, and Lee, in the State of Iowa, and the interest in said railroad and wagaon bridge across the

Des Moines river, and all the estate, rights, title, and interest, property, possessions in law or in equity of the said party of the first part now acquired or hereafter to be acquired, together with all and singular the rights, privileges, corporate property, and franchises of said railway company, each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in anywise appertaining; to have and to hold the said granted premises unto the said party of the second part and unto their successor or successors forever, in trust nevertheless and for the uses and purposes in this indenture expressed and declared, provided always, and these presents are upon the express condition that if the said party of the first part and its successors shall well and truly pay or cause to be paid to the holders of its said bonds so issued as aforesaid and each and every of them the principal sum of money and the interest thereon as therein mentioned and set forth and shall well and truly keep, fulfill, and perform all and singular its covenants and promises, stipulations and agreements, as therein and herein contained, according to the true intent and meaning thereof, that then and from thence these presents and estate hereby granted shall cease, determine, and be null and void and the right to the premises hereby conveyed shall revert to and revest in said party of the first part, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And this indenture further witnesseth: That the premises hereby granted, bargained, and described and each and every part and parcel thereof, with the appurtenances, are granted, bargained, and conveyed unto them, the said party of the second part and their successor or successors in the trust hereby created, upon the trust, terms, conditions, and agreements and to and for the uses, interests, and purposes following—that is to say, the actual possession, use, management, and control of the said railroad premises hereby
180 granted shall be and remain with the said party of the first part without any molestation of the said party of the second part or their successor or successors in the trust hereby created so long as its said bonds shall remain without default of forfeiture, and the said party of the first part shall perform and keep the covenants and stipulations therein or herein contained; and the said party of the first part, for itself and its successors, doth covenant and agree to pay unto the holders of said bonds respectfully the said principal sums of money and interest thereon as mentioned and expressed, and if any default should be made in the payment of said interest or any part thereof on any day whenever the same is made payable as expressed in said bonds and the coupons *and the coupons* thereto annexed, and should the same remain unpaid and in arrears for the space of six months, there and from thenceforth—that is to say, after the laps- of the said six months—the said principal sums named in said bonds, with all arrearages of interest thereon, shall be, at the option of the holder or holders thereof of more than one-half the amount of said bonds then outstanding, expressed in writing to the said party of the second part, their successor or successors, become and be due and payable immediately thereafter, although the period

therein limited for the payment thereof may not have then expired, anything therein or herein contained to the contrary thereof in anywise notwithstanding, and if any default should be made in the payment of the principal sums named in said bonds or the interest that has or may grow due thereon, or of any part of either the said principal or interest on any day whereon the same is made payable as therein mentioned and expressed, and should the same remain unpaid for the space of six months thereon, or if the said party of the first part shall fail well and truly to keep, fulfill, and perform all and singular its other covenants, promises, and stipulations therein or herein contained according to the true intent and meaning thereof, that then and from thenceforth it shall be lawful for and shall be and become the duty of the said party
181 of the second part, their successor or successors in the said trust, upon the written request of the holders of more than one-half of the amount of said bonds then outstanding, to enter into, upon, and take possession of all and singular the said premises, property, and franchises of every nature and description herein granted and conveyed, and as attorneys-in-fact or agents of the said party of the first part, by themselves, their agent or agents or substitutes duly constituted, have, use, enjoy, and operate the same, making from time to time all needful repairs, alterations, and additions and the costs and charges of such taking possession and a reasonable compensation for the services of said trustee of such taking possession and while so in possession, after deducting the expenses of such repaires, alterations, and additions, apply the proceeds therof to the payment of the principal and interest of said bonds issued as aforesaid remaining unpaid and which may have become due.

And upon the writ-en repuest of the holders of more than one-half of the amount of said bonds which shall then be outstanding and unpaid and in which case default shall have been made in any manner as aforesaid it shall be lawful and be and become the duty of the said party of the second part, their successor or successors, to sell or cause to be sold the said premises, real and personal estate, rights and franchises and property of every nature and description hereby granted and all benefits and equity of redemption of the said party of the first part, its successors or assigns therein, at public auction in the city of Keokuk, in the State of Iowa, or in the city of New York, as the said trustees, their successor or successors, may elect, after first giving twelve weeks' notice of said sale by publishing the same in at least one daily newspaper published in the city of New York and in two daily newspapers published in the city of Keokuk, and on such sale, as the attorneys of the said party of the first part, for that purpose by these presents duly constituted and appointed, to make, execute, and deliver
182 to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in law for the same in fee simple, which shall be forever a perpetual bar, both in law and equity, to the said party of the first part, its successors and assigns, and all other persons, associations, bodies corporate or politic claiming or to claim by, from, or under them or either of them of all rights,

interests, or claims of, in, or to the said premises, rights, or franchises or any part or parcel thereof.

The amount of bid or purchase-money of said sale may be paid and satisfied in whole or in part by the outstanding bonds or any of them so issued as heretofore stated and the same shall be taken and received in whole or in part payment and satisfaction by the party of the second part, their successor or successors, according to their value, to be ascertained and determined by the net amount arising from such sale as compared with the amount of outstanding bonds issued hereunder as aforesaid.

And the said party of the first part doth hereby covenant for itself and successors that in no case shall it or they claim or take advantage of any stay, valuation, or appraisement laws, all benefits of which are expressly waived, or obtained or apply for any injunction or stay of proceedings or other process to prevent, postpone, or delay such entry, use, enjoyment, operation, or sale as aforesaid.

And the said party of the second part, after deducting from the proceeds of such sale the cost and charges for advertisements and expenses thereof of said sale and of managing said property, shall apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of said outstanding mortgage bonds not used in payment of said bid and purchase aforesaid, and shall pay over the remainder or overplus of the purchase-money proceeds of such sale, if any there shall be, to the party of the first part, its successors or assigns, and all other persons, associations, bodies corporate or politic claiming or to claim the premises or any part thereof by, from, or under them or
183 either of them.

And in case of any such taking possession or proceedings to sell the said mortgaged premises for default in payment of interest only, if the said party of the first —, before the bonds shall become payable and before such sale shall be made, shall pay and satisfy all interest then in arrears on any of said bonds and shall also pay and discharge all costs, expenses, and disburs-ments and pay all said reasonable compensation then and heretofore accrued by reason of such default, the said trustees, upon evidence thereof made to their satisfaction, shall thereupon discontinue such proceedings and restore possession of the said mortgaged premises to the said party of the first part, to be held subject to these presents in like manner as if said default had not happened.

And the said party of the first part further covenants and agrees for itself and its successors and all and every other person or persons, associations, bodies politic or corporate whatever or whomsoever lawfully or equitably claiming or deriving any estate, right, title, or interest of, in, and to the premises hereby granted or intended so to be or any part thereof by, from, under, or in trust for it or them, upon the reasonable request of the said party of the second part, their successor or successors, to make, execute, do, and deliver or cause to be made, done, executed, and delivered all and every such further and other reasonable acts, conveyances, and as-

surances in the law, and particularly for the conveyance of all lands, depot grounds, rights of way, and such other property, including any lands that may be granted or donated to aid in the construction of said railroad or may in any manner hereafter be acquired by the party of the first part for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the party of the second part, their successor or successors, for the uses, interests, and purposes herein set forth and declared as by the said party of the second part, their suc-
184 cessor or successors *or successors*, or their counsels learned in the law shall be reasonably advised, devised, and required, and also that it hath not been made, done, committed, executed, or suffered any act or acts, thing or things whatsoever whereby or by means whereof the above mentioned and described premises or any part or parcel thereof, now or at any time hereafter, shall or may be impeached, charged, or incumbered in any manner or way whatsoever.

The said party of the first part doth herebe, for itself and its successors, further covenant- and agree- that this trust and the security hereby intends shall extend to such mortgage bonds only as are mentioned in said mortgage or deed of trust in first mortgage executed by the party of the first part on the first day of June, A. D. 1870, and such only as shall be certified and countersigned by the trustees aforesaid, their successor or successors, and that said trustees shall certify and countersign the whole or any part of said six thousand bonds not heretofore signed by them at any time when requested so to do by the party of the first part, the same being first signed by the president and secretary and sealed with the corporate seal of the said party of the first part.

It is also especially agreed and understood that all of said six thousand bonds shall be upon an equality so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times, and none of said bonds shall be entitled to priority, and these presents and everything herein contained shall have effect and enure as a security for said bonds equally and without prefference, whether issued at one, the same time, or at different times.

It is also mutually agreed that the said party of the second part, their successor or successors, in the trust hereby created shall not be responsible at any time for the default or misconduct of his or their agents to be employed by him or them in his or their discretion, and shall be held bound to the exercise of ordinary
185 and reasonable care and dil/igence only in the management thereof, and that the said party of the second part, their successors, in the trust hereby created shall be entitled to receive proper and reasonable compensation for every labor or service performed and expense, disbursements, and damages incurred by him or them in the discharge of their said trust in case they shall take possession of said premises or any part thereof or manage the same, and shall not in any manner be liable or responsible for any loss or damage unless the same shall happen by gross neglect or wilful

malfeasence on their part, and also that in case of the death, resignation, or other dissability of the said party of the second part or their successor or successors from time to time at any time hereafter or in case of the vacancy in the trusteeship from any cause it shall be competent and lawful for the said party of the first part or its successors to apply to any court of record in the States of Iowa or Missouri or of the United States of adequate jurisdiction to appoint a successor or successors to said party of the second part to fill the vacancy so made in said trust hereby created, and upon such appointment and the acceptance thereof the person or persons, body politic or corporate, so appointed shall become and be vested for the uses and interests and purposes herein set forth and declared, with all the estate, rights, and powers, title and interest in and to the said party of the second part without any other or further assurances or conveyances of the same, and shall perform all the duties of trustee in like manner as if he or they had been named in this instrument as trustee.

And the said party of the first part further *further* covenants and agree- with the party of the second part and their successors and with the holders of each and all of the said issue of six million of dollars of said bonds that the said party of the first part will create and make a sinking fund for the redemption *fo* such bonds and each of them by setting aside and depositing with the commissioners to be appointed by the party of the first part for that
186 purpose, in accordance with said deed of trust in first mortgage of date June first, A. D. 1870, annually the sum of thirty thousand dollars (30,000). Such sinking-fund moneys shall from time to time, under the order of the party of the first part, be invested in the purchase of the bonds so issued or in the bonds of the Government of the United States, and the money accruing on any and all of such investments for interest as fast as the same shall be received shall be added and paid into such sinking fund and compounded therein continually and reinvested in like manner with the other money of said fund; that the board of directors of said railway company, party of the first part, shall have entire control over the management of said sinking fund, and every person in charge of or connected with the same shall from time to time direct in what bonds or securities it shall be invested and at what prices or rates and how it shall be kept and the manner of keeping the accounts thereof, and shall require ample security to be given them by any person in charge of its moneys or securities or bonds for safe keeping. Every bond of the said issue of six million of dollars which may be purchased and held by said sinking fund shall remain in full force until the whole of such issue shall have matured or shall have been absorbed or otherwise redeemed by said party of the first part, and the interest on such bonds held by said sinking fund shall be paid by said railway company regularly as the interest on its other bonds is paid.

In witness whereof the said party of the first part hath caused its

corporate seal to be affixed hereunto and these presents to be signed by its president and secretary the day and year first above writ-en.

MISSOURI, IOWA & NEBRASKA RAILWAY COMPANY,
[L. S.] By F. M. DRAKE, *President.*
JAMES FITZ HENRY, *Secretary.*

STATE OF IOWA, *Appanoose County,* } ss:

187 Be it remembered that on the sixth day of January, A. D. 1879, before me, the undersigned, a notary public in and for said county, personally came F. M. Drake, the president of the Missouri, Iowa and Nebraska Railway Co., and James Fitz Henry, the secretary for said company, both of whom are to me personally known to be such officers of said railway Co. and who signed the foregoing indenture, and acknowledged said indenture to be the free and voluntary act and deed of said railway company in due form of law, and that said railway company executed the same for the purpose therein set forth.

In witness whereof I have hereunto set my hand and affixed my official seal.

W. L. SELBY,
Notary Public.

Filed Jan. 24th, 1880.

JAMES R. HUME, *Recorder.*

STATE OF MISSOURI, *County of Clark,* } ss:

I, I. C. Weaver, recorder of deed- in and for said county, hereby certify that the above is a true copy of the original deed of trust as the same appears of record in my office.

Witness my hand as recorder and the seal of my office. Done at office, in Kahoka, this 24th day of April, 1889.

[L. S.] I. C. WEAVER, *Recorder.*

188 G.

(*Copy of Mortgage of M., I. & N. R'y Co. to the Mercantile Trust Co., Mar.* 1, 1881.)

This indenture, made and entered into this first day of March, A. D. 1881, by and between the Missouri, Iowa and Nebraska Railway Company, a consolidated corporation of Missouri and Iowa, party of the first part, and the Mercantile Trust Company, as trustee, of the city of New York, party of the second part, witnesseth:

Whereas the first party heretofore executed and delivered to the Farmers' Loan and Trust Company, trustee, a certain — or deed of trust, bearing date the first day of June, 1870, whereby the railroad, property, and franchises of said party were mortgaged to said Farmers' Loan and Trust Company, trustee, to secure six thousand first-mortgage bonds of the Missouri, Iowa and Nebraska Railway

Company for one thousand dollars each, falling due on the first day of June, 1910, and payable at the office of said trustee, in the city of New York, with the half-yearly installments of interest thereon at the rate of seven per cent. per annum, three millions twenty-five thousand dollars of said bonds only having been issued;

And whereas, by an agreement dated February 12th, 1880, between the Missouri, Iowa and Nebraska Railroad Company, of the first part, and H. C. Thacher, Henry Hill, and George Opdyke, a committee of the bondholders of said last-named company, of the second part, and the Wabash, St. Louis and Pacific Railway Company, of the third part, the Missouri, Iowa and Nebraska Railway Company did agree to effect the consolidation of its capital stock, property, and franchises with all the capital stock, property, and franchises of the Wabash, St. Louis and Pacific Railway Company if the assent of the directors and shareholders of said company thereto, as required by law, could be procured; and in the event of the inability of the said Missouri, Iowa and Nebraska Railway Company to secure the requisite assent of its directors and shareholders to
189 such proposed consolidation, then the said Missouri, Iowa and Nebraska Railway Company did bind itself by said agreement to lease its railroad and equipment in perpetuity to said Wabash, St. Louis and Pacific Railway Company upon certain conditions in said agreement set forth;

And whereas, in furtherance of said agreement and in furtherance of a resolution of its board of directors duly adopted and the authorization thereof of its stockholders, the Missouri, Iowa and Nebraska Railway Company did demise and lease its railroad extending from the Mississippi river at Keokuk, Iowa, through and across the States of Iowa and Missouri, to a point on the Missouri river opposite Brownsville, Nebraska, with the franchises, property, and everything appertaining thereto, unto the Wabash, St. Louis and Pacific Railway Company, by indenture of lease bearing date the third day of September, 1880, for the term of ninety-nine years upon the terms and conditions in said indenture set forth;

And whereas in and by said agreement of February 12th, 1880, the Wabash, St. Louis and Pacific Railway Company (among other things) did promise, in the event of obtaining title as lessee to the railroad, property, and the franchises aforesaid of the Missouri, Iowa and Nebraska Railway Company, to execute its mortgage bonds, to bear interest at six per centum per annum, principal and interest payable in gold or its equivalent in the city of New York, secured by first mortgage on the railroad property of the Missouri, Iowa and Nebraska Railway Company, and issue the same to an amount not exceeding fifteen thousand dollars, par value, per mile of said railroad, the said first parties having in said agreement stipulated and it being by second and third parties understood that the length of said railroad then complete was one hundred and forty-eight and one-half miles, the trustee of said bonds to be retired being, moreover, in possession of funds to complete three additional miles of said railroad, so that the whole of said outstanding bonds

could be retired by new bonds issued by the said Wabash,
190 St. Louis and Pacific Railway Company at the rate of fifteen thousand dollars for each mile of completed railroad as aforesaid:

And whereas since the date of the contract and agreement aforesaid it has been found, on measurement, that the completed road of the Missouri, Iowa and Nebraska Railway Company is but one hundred and forty-three miles and a half in length, thus necessitating the issue of bonds exceeding fifteen thousand dollars a mile, but not over sixteen thousand dollars a mile of such completed portion;

And whereas said bonds were, by the terms of said agreement, to be exchanged for bonds of the Missouri, Iowa and Nebraska Railway Company secured as aforesaid by its mortgage of June 1st, 1870, at the rate of fifteen thousand dollars six per cent. bonds and five thousand dollars preferred stock of the Wabash, St. Louis and Pacific Railway Company for every twenty thousand dollars of said bonds of the Missouri, Iowa and Nebraska Railway Company, and the said Missouri, Iowa and Nebraska Railway Company did agree that it would cause all the holders of its then outstanding bonds, amounting to three million and twenty-five thousand dollars, to enter into its covenants for the surrender, cancellation, and exchange of the same, as in said agreement provided:

And whereas, the Wabash, St. Louis and Pacific Railway Company having, as aforesaid, obtained title by lease to the railroad, property, and franchises of the Missouri, Iowa and Nebraska Railway Company, the stockholders of the Wabash, St. Louis and Pacific Railway Company, at a meeting of said stockholders called by the board of directors of said company, held at its principal place of business, in the city of St. Louis, in the State of Missouri, on the 20th day of November, 1880, full notice of the time, place, and object of said meeting having been given for more than sixty days prior to the time of said meeting in the manner required by law, by a resolution passed by the concurrent votes of the holders of more than two-thirds of all the stock of said Wabash, St. Louis and
191 Pacific Railway Company (which resolution has been duly recorded as required by law), did authorize and direct the execution of its bonds to such amount as shall be required, not exceeding two million three hundred thousand dollars, for the purpose aforesaid, conditioned and bearing interest as aforesaid, and did authorize the same to be issued and to be exchanged on the terms aforesaid for the outstanding bonds hereinbefore mentioned of the Missouri, Iowa and Nebraska Railway Company;

And whereas said Wabash, St. Louis and Pacific Railway Company has, in pursuance of said resolution of its stockholders and of the order of its board of directors, and in furtherance of said agreement, executed its twenty-two hundred and sixty-nine bonds, each for the sum of one thousand dollars (being at the rate of fifteen thousand eight hundred and eleven dollars and eighty-four cents or thereabout per mile on one hundred and forty-three miles and one-half of the completed road), conditioned as aforesaid, with coupons or interest warrants attached thereto, and placed the same in

the hands of the Mercantile Trust Company, said trustee, for the purposes of exchanging as aforesaid;

And whereas said bonds are numbered from one to twenty-two hundred and sixty-nine, both inclusive, and are, together with the certificates of the trustee appearing thereon and the coupons attached thereto, substantially in the following form:

Wabash, St. Louis and Pacific Railway Company First-Mortgage Bond, Iowa Division.

Know all men by these presents, that the Wabash St. Louis and Pacific Railway Company is indebted to the Mercantile Trust Company or bearer, in the sum of one thousand dollars in gold coin of the United States of America which said sum said company hereby promises to pay to said The Mercantile Trust Company, or the bearer hereof on the first day of March A. D. 1921 at the office or agency of said company in the city of New York, with interest thereon at the rate of six per centum per annum, payable
192 semi-annually in United States gold coin in the city of New York, on the first days of March and September in each year on the presentation and surrender of the interest coupons hereto annexed, as they severally become due. The said sums of principal and interest to be paid to the holder hereof free and clear of all taxes and assessments which said company may by lawful authority be required to withhold from the owner hereof, the said company hereby agreeing to pay such tax in addition to said interest. This bond is one of twenty-two hundred and sixty-nine of like date, amount and conditions, all of which are executed by said railway company for the purpose of being exchanged for certain bonds issued by the Missouri, Iowa and Nebraska Railway Company, a consolidated corporation of Iowa and Missouri, and bearing date June 1st, 1870, which said bonds are secured by a first mortgage or deed of trust upon the railroad property and franchises owned by said last-named company.

This entire issue of bonds is secured by a mortgage or deed of trust, executed by the Missouri, Iowa and Nebraska Railway Company, the owner of said railroad, to the Mercantile Trust Company, trustee, bearing date March 1st, A. D. 1881 and covering the railroad property and franchises owned by the Missouri, Iowa and Nebraska Railway Company, extending from Keokuk, Lee county, Iowa, to Van Wert, Decatur county, Iowa about one hundred and forty-three miles and one-half in length. Said mortgage is a first lien upon the said railroad, except that of the mortgage securing the bonds to be received in exchange as aforesaid, so that said mortgage will be a first mortgage whenever all of said bonds have been exchanged. All the bonds aforesaid of the Missouri Iowa and Nebraska Railway Company that shall be exchanged for bonds of this issue, shall be properly stamped and retained by said trustee for the protection of the persons so exchanging and no bonds of this issue shall be sold or disposed of by said trustee except in exchange as aforesaid, and

not in excess of sixteen thousand dollars per mile of said rail-
193 road. If default shall occur in the payment of the interest upon any bonds of this issue and such default shall continue for six months, the principal of all of said bonds shall become due in the manner and with the effect provided in said mortgage or deed of trust. This bond is payable without relief from any extension, stay or appraisement laws now existing or that may hereafter be enacted. This bond shall not be obligatory until authenticated by the certificate of said trustee. It is, however, agreed between the said company and the holder of this bond that no liability therein shall be enforced against any officer or stockholder of said company, or against the estate of any such officer or stockholder, by virtue of any law of any State whatever it being agreed that such officers and stockholders do not assume any personal liability on this bond.

In testimony whereof, said Wabash St. Louis and Pacific Railway Company has caused its corporate seal to be hereunto affixed and these presents to be executed by its president and signed by its secretary, this first day of March, A. D. 1881.

(*Form of Coupons.*)

On the first day of —— A. D. 18—, the Wabash St. Louis and Pacific Railway Company will pay the bearer, at its office or agency in the city of New York, thirty dollars, being interest for six months on bond No. —, Iowa division.

(*Trustee's Certificate.*)

This is to certify that this bond is one of twenty-two hundred and sixty-nine bonds of one thousand dollars each, secured by and mentioned in the mortgage within referred to.

THE MERCANTILE TRUST COMPANY, *Trustee*,
By —— ——, *President.*

And whereas a meeting of the board of directors of said first party was held at the city of New York on the 24th day of May, 1881, full notice of the time, place, and object of said meeting having been given in the manner required by law, at which meeting the direct-
ors of said Missouri, Iowa and Nebraska Railway Company
194 did, by a resolution duly passed, authorize and direct the execution of a mortgage or deed of trust by said first party, covering and embracing the railroad, property, and franchises owned by said first party, to secure said twenty-two hundred and sixty-nine bonds of the Wabash, St. Louis and Pacific Railway Company executed and issued as aforesaid pursuant to said agreement:

Now, therefore, in pursuance of the resolution aforesaid and of the order of the board of directors, for the purpose of securing the payment of the principal and the interest of said twenty-two hundred and sixty-nine bonds of the Wabash, St. Louis and Pacific Railway Company and the coupons attached thereto, and in furtherance of said agreement of the 12th day of February, 1880, and the said lease of the third day of September, 1880, and in

consideration of the premises and of the sum of one dollar in hand paid by the said Mercantile Trust Company, trustee, the Missouri, Iowa and Nebraska Railway Company, the party hereto of the first part, hath this day granted, bargained, sold, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, release convey, and confirm, unto the said Mercantile Trust Company, as trustee, and to its successors in said trust all and singular the railroad of the party of the first part extending from Keokuk, Lee county, Iowa, to the south line of said county and State; thence through the counties of Clark, Scotland, and Schuyler, in the State of Missouri, to the north line of said State; thence in the State of Iowa, through the counties of Appanoose, Wayne, and Decatur, to Van Wert, said railroad being in the aggregate about one hundred and forty-three and one-half miles in length, together with all and singular the road-bed, right of way, tracks, side tracks, turnouts, stations, depots and depot grounds, shops, engine-houses, coal-houses, fuel-houses, and all lands, structures, and appurtenances intended for the use of the railway so described, and all em-
bankments, fences, culverts, bridges, freight-houses, and
195 other structures intended as aforesaid, and all locomotives, freight and passenger cars, hand cars, gravel and construction cars, all machinery, tools, implements, and materials intended for the use of said road, intending to include all interest, property, estates, rights, and franchises belonging to the Missouri, Iowa and Nebraska Railway Company, with such additions and improvements as the party of the first part and the Wabash, St. Louis and Pacific Railway Company shall add thereto, and no more; to have and to hold all and singular the premises, rights, franchises, real and personal property hereby conveyed, with the appurtenances thereto belonging, unto the said Mercantile Trust Company and to its successors in said trust forever, in trust, however, for the person or persons and bodies politic or corporate who shall at any time become the purchasers or holders or owners of the said twenty-two hundred and sixty-nine bonds or any part thereof or any part of the coupons attached thereto. If the said Wabash, St. Louis and Pacific Railway Company or its successors or assigns shall well and truly pay or cause to be paid the several sums of money specified in the several bonds hereinbefore described, as well the principal as the installments of interest, according to the tenor and effect of said bonds and each and every of them, or if the said bonds and the interest payable thereon become in anywise paid or satisfied, then and in such case the estate, right, title, interest, and demand of said party of the second part, its successors in said trust and assigns, shall cease, determine, and become void; otherwise to be and remain in full force and virtue in law and for the benefit and security of the holders of said bonds and each of them.

Until default be made in the payment of the principal or interest of said bonds or of some of or any of them, the said Wabash, St. Louis and Pacific Railway Company shall be permitted to possess, operate, manage, and enjoy said railroad, with its appurtenances, and to take and use the rents, incomes, tolls, and profits thereof,

under and by virtue of and in accordance with the terms
196 and conditions of said lease, in the same manner and with the same effect as if this deed had not been executed. In case default shall be made in the payment of any installment of interest accruing on said bonds or any of them, and such default shall continue for a perid of six months after the maturity thereof, it shall be lawful for said party of the second part or its successors in said trust, by themselves, their agents or attorneys, to enter upon, take possession of, manage, operate, and control the said railroad property hereby conveyed, owned, or held by lease, contract, or otherwise, by superintendents, receivers, and mortgagors thereof, making from time to time all needful repairs, replacements, and such alteration, additions, and improvements as may seem to be judicious and proper, and to collect and receive all rents, tools, incomes, issues, and profits thereof, and after deducting the expenses of operating said railroad and property and lea-ehold interest and all costs of improvements and taxes that may have accrued thereon, as well as just and reasonable compensation for its own services in and about the premises, to apply the money arising therefrom to the payment of interest in the order in which it becomes due and ratably to the persons entitled thereto; and when said interest so in default and any installment of interest subsequent*by* maturing shall be paid up, then said party of the second part shall restore the possession of said railroad to the said party of the first part or to the Wabash, St. Louis and Pacific Railway Company, the lessee thereof. If default shall occur in the payment of any installment of interest, and such default continue for the space of six months after the maturity and demand thereof, then if a majority in value of the holders of said bonds then outstanding and secured by this mortgage shall determine*d* and notify said trustee that they require that the principal of all of said bonds become at once due and payable, said bonds shall thereby become due and payable, notwithstanding any clause contained therein to the contrary; and if said principal sum shall
197 become due and not paid according to the tenor of said bonds and upon written notice by the holders of a majority of the bonds issued and outstanding, under the authority hereinbefore mentioned, the said trustee shall have the power to enter upon and take possession of said railroad, with the appertenances and all and singular the property and franchises hereby mortgaged, and the lessees or agents of the said first party are hereby authorized and required to deliver up the same, and said trustee shall cause said mortgaged premises to be sold at public auction at the city of Keokuk, Iowa, or the city of New York, as may be directed by the holders in interest of a majority of said bonds, giving at least sixty days' notice of the time and place and terms of sale and of the specific property to be sold, publishing the same in one daily newspaper in each of said cities for sixty days prior to said sale, and to adjourn said sale from time to time, if necessary in the opinion of said trustee; and if the same shall be adjourned, to sell without further notice of the time and place of sale and to execute to the purchaser or purchasers a good and sufficient deed in fee simple for

the same, which shall be a bar against the party of the first part and all persons claiming by, through, or under it of all right, title, claim, or demand in and to the mortgaged premises or any part thereof, and out of the proceeds of such sale and the income that may have been received for the use, operation, and management of said road while in possession of said trustees, after deducting just allowances and expenses, as in the preceeding article mentioned, to pay, first, the interest; and, second, the principal of said bonds ratably and with due regard to the successive maturity of different series of coupons, as far as said proceedings will go for that purpose; and in case any surplus should remain, to pay the same over to the party of the first part; but in case it should not be deemed proper and expedient in all or any of the States in which the mortgaged premises are found to seize and sell the same in pursuance of the power herein granted, then it
198 shall be the duty of said trustee to proceed in any proper tribunal to foreclose said mortgage according to the usual and established principals of law and equity; but it is expressly understood and agreed between the parties that in no case whatever shall the party of the first part claim any right or advantage by reason of any valuation, appraisement, stay, or extension laws that now exist or that may hereafter be enacted in any of the States in which said property exists or may be found, and said first-named party releases to the second party all and every such right, claim, and demand, and hereby further agrees that it will neither apply for an injunction nor any stay of proceedings to arrest or prevent such sale from being made or possession being taken as hereinbefore provided.

It is hereby expressly declared that this investment is made and the trust herein created upon condition that if any sale be made under and by virtue of this mortgage, whether by judicial decree or foreclosure, or in execution of the trust so created, either by judicial decree or otherwise, the holders of a majority of the said bonds then outstanding shall have the right to have said premises and all property herein embraced purchased for the use and benefit of all the holders of said then outstanding bonds. In case such sale shall be made by any person or officers other than the trustee herein named, or its successors, then the holders of the majority of said bonds then outstanding shall have the right by notice in writing to require the said trustee or its successors to make such purchase on such terms as they in said notice shall prescribe; and in case said sale shall be made by said trustee, then the holders of a majority of said outstanding bonds shall have the right to appoint any other person whom they may choose to make such purchase on such terms as they may prescribe. If any person other than such trustees shall be so appointed, such appointment and the terms of purchase shall be in writing, a copy of which writing shall be delivered to said trustees or their successors before such sale; and if the
199 holders of a majority of said outstanding bonds shall elect to have said purchase made as aforesaid and shall prescribe the terms on which they desire to make the same, then it shall be the

duty of said trustee or its successors, or such other person as may be appointed as aforesaid, to make such purchase if the same can be made on the terms so prescribed, and, having so purchased said premises and property, the right and title thereto shall rest in the said trustee or the person so purchasing for the use aforesaid, and no bondholder shall have any claim to the said premises or property or the proceeds thereof except his *pro rata* share therein as represented by a new company or corporation to be formed for the use and benefit of the holders of all said bonds then outstanding.

And said trustee or person making said purchase shall take such lawful measures as may be deemed for the best interests of all said bondholders to organize a new company or corporation, said company or corporation to be organized upon such terms, conditions, and limitations and in such manner as the holders of a majority of said outstanding bonds shall in writing request or direct.

And thereupon the said trustee or other person making such purchase shall convey said premises and property to the new company or corporation; and it is hereby declared that all persons who shall claim any interest, benefit, or advantage by virtue of this instrument or the trust hereby created shall take the same subject to all the terms herein contained and subject to all the rights and powers conferred by this instrument on the holders of the majority of the bonds hereby secured. It is hereby agreed and understood that for better assurance to the party of the second part and to the holders of the bonds secured by this instrument, the party of the first part agrees that it will, on demand, at any time and all times hereafter make, execute, and deliver all such other and further conveyances and assur- for the better assuring unto said trustee and its successors in the trust hereby created the said railroad, with the appur-
200 tenances, equipment, and property hereinafter described or intended so to be, and all other property belonging to the said party of the first part now owned or hereafter to be acquired as above provided and set forth or any and all the franchises now held or hereafter to be acquired by the party of the first part as said trustee or its successors, by their counsel, shall reasonably advise, devise, or require.

Whenever it shall happen, from changes required to be made in said railroad and appurtenances, that any parcel of property whatever, real or personal, has become unnecessary or useless to the said railroad company for its business by reason of change of line or depot or other reasons, or when any of the personal property shall become worn out and insufficient and unnecessary to the operation of said railroad, then and in such case it shall be lawful for the directors of said railway company to make sales, exchanges, or other disposition of such parcels of real or personal property as they may deem for the best interest of said railway company, and upon the sale or exchange of such property for any other, and when any other property shall be acquired in the place of such property, the same shall be held subject to the lien of this mortgage as if it was the property of said company at the date hereof, and the parcels of property so held and disposed of by said directors shall be

exempt from the lien hereby created. It is further agreed that said trustee shall not be required to take any action under this deed in the event of default until the party asking such action shall have indemnified such trustee for expenditure necessarily involved. All bonds that shall be received by said trustee in the course of said exchange shall be retained by said trustee for the protection of the persons who shall hold or own the bonds hereby secured in the event of any holder or holders of the said Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange and claiming priority over those who shall make such exchange, and the bonds so received in exchange shall, for the purpose of preserving
201 the rights and security of the holders of the bonds given in exchange for them and to prevent their use for any other purpose, be endorsed as follows:

"This bond has been deposited with the Mercantile Trust Company, trustee, under provisions of a certain deed of trust or mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated March 1st, 1881, conveying to the said Mercantile Trust Company, as trustee, the railroad of the Missouri, Iowa and Nebraska Railway Company. It is not assignable for any purpose, but is to be used only in foreclosure, if need be, in pursuance of said trust."

It is, however, expressly understood and agreed that the said trustee shall not be charged with the duty of exchanging the said bonds, but it shall be the duty of said trustee to authenticate the said bonds and deliver them over to the party of the first part for the purpose of such exchange; and the party of the first part hereby agrees to effect and carry out the exchange of bonds hereinbefore contemplated and provided for and to deliver over to the said trustee the bonds of the first party, which it shall receive in exchange for the bonds of the Wabash, St. Louis and Pacific Railway Company, to be delivered to it by said trustee as aforesaid.

The said trustee shall receive reasonable compensation for every act done by it as such trustee under this indenture, and the said trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense, unless the holder of the bonds secured hereby or some of them shall give sufficient security to indemnify the trustee from any such liability or expense, and the said trustee shall be at liberty to appoint counsel learned in the law in all suitable cases where reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that the trustee shall not be liable for any act, default, or neglect of any agent by it appointed when such agent shall have been selected with reasonable discretion and shall only be required to exercise good faith and ordinary prudence and diligence in the performance of its duties under this indenture.

202 In witness whereof the said Missouri, Iowa and Nebraska Railway Company, in pursuance of the resolution aforesaid, has caused these presents to be extended and signed by its president and attested by its secretary and has caused its corporate seal to be hereunto affixed the day and year aforesaid, and said The Mercan-

tile Trust Company has also executed the same to evidence *to* their acceptance of the trust hereby created the day and year aforesaid.

THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY,

[L. S.] By A. L. HOPKINS, *President.*

Attest: T. P. SHONTS, *Secretary.*

THE MERCANTILE TRUST COMPANY, *Trustee.*

[L. S.] By LOUIS FITZGERALD, *President.*

Attest: M. C. D. EWING, *Secretary.*

STATE OF NEW YORK, } ss:
County of New York, }

Be it remembered that on this 28th day of May, 1881, personally came before me, the undersigned, a notary public within and for the county aforesaid, A. L. Hopkins, who, being by me duly sworn, did depose and say that he is the president of the Missouri, Iowa and Nebraska Railway Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him as president of said company, by virtue of the order of the board of directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said board of directors; and the said A. L. Hopkins, as president, acknowledged the foregoing instrument to be the act and deed of the Missouri, Iowa and Nebraska Railway Company for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my notarial seal of office this 28th day of May, 1881.

[L. S.] WM. J. HARDNY,
Notary Public, Kings County, State of New York.

Certificate filed in New York county.

203 STATE OF IOWA, } ss:
County of Appanoose, }

Be it remembered that on the 18th day of June, 1881, personally came before me, the undersigned, a notery public within and for the county aforesaid, T. P. Shonts, who, being by me duly sworn, did depose and say that he is the secretary of the Missouri, Iowa and Nebraska Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and fixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 8th day of June, 1881.

[L. S.] W. L. SELBY,
Notary Public.

Filed for record June 16th, 1881, at 11 o'clock a. m.
JAMES R. HUME, *Recorder.*

STATE OF MISSOURI, } ss:
County of Clark, }

I, I. C. Weaver, recorder of deeds in and for said county, hereby certify that the above is a true copy of the original deed of trust as the same appears of record in my office.

Witness my hand as recorder and the seal of my office.

Done at office, in Keokuk, this 26th day of Apr., 1889.

[L. S.] I. C. WEAVER, *Recorder.*

204 H.

(*Copy of Supplemental Bill of Foreclosure of the Farmers' Loan & Trust Co. vs. The M., I. & N. R'y Co. et al.*)

In the Circuit Court of the United States Within and for the Southern District of Iowa, Eastern Division, at Keokuk.

THE FARMERS' LOAN AND TRUST COMPANY, Complainant,
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY and Others, Defendants. } In Equity.

The supplemental bill of the Farmers' Loan and Trust Company, complainant, in the original bill filed herein.

To the judges of the said circuit court:

The Farmers' Loan and Tryst Company, the complainant in the original bill, brings this its supplemental bill against The Missouri, Iowa and Nebraska Railway Company, the original defendant herein; The Wabash, St. Louis and Pacific Railway Company, a corporation created, organized, and existing under the laws of the States of Missouri, Illinois, Indiana, and Ohio; The Humeston and Shenandoah Railroad Company, a corporation created, organized and existing under the laws of the State of Iowa; The Mercantile Trust Company, a corporation created, organized, and existing under the laws of the State of New York, and against all other parties to this suit; and thereupon your orator complains and says:

1. Heretofore, to wit, on the 30th of December, A. D. 1879, your orator filed its bill of complaint in equity in this suit in the circuit court of the United States within and for the district of Iowa against the defendant The Missouri, Iowa and Nebraska Railway Company to foreclose a certain mortgage or deed of trust made by the said defendant The Missouri, Iowa and Nebraska Railway Company to your orator, as trustee, on the first day of June, A. D. 1870, to
205 secure the payment of six thousand bonds of and for the sum of one thousand (1,000) dollars each, of which said bonds three thousand and twenty-five (3,025) were afterwards actually issued, as set forth in the said original bill, and your orator in and by the said bill also, among other things, prayed for the appointment of a receiver of the property of the said defendant, all of which will more fully and at large appear in and by the said bill or the

record thereof, ready to be produced and proved as this honorable court may direct.

2. Thereupon such proceedings were duly had before said court in the said cause that the said defendant The Missouri, Iowa and Nebraska Railway Company was duly subpœnaed to appear and answer to the said bill of complaint, and that afterwards and in pursuance thereof the said defendant did appear and answer to the said bill of complaint, and that thereafter and before the final decree in said cause numerous other persons became parties to this suit and appeared and answered and filed other pleadings therein; and afterwards such proceedings were had before said court in the said cause that issues were made by and between the parties, evidence taken thereupon, and the said cause, after argument of counsel, submitted to the said court for its determination; and afterwards, to wit, on the 22d day of October, A. D. 1880, upon the consideration of the evidence and arguments of the counsel, the said court duly made and entered of record a decree in the said cause, in conformity with the prayer of the bill aforesaid, among other things foreclosing the said mortgage and ordering a sale of the mortgaged property, as in and by the record thereof, ready to be produced and proved as this honorable court may direct, will more fully and at large appear, reference being had thereto; which said decree still remains in full force and effect, not reversed, satisfied, or otherwise vacated, and your orator hath not obtained any execution or satisfaction of or upon the said decree so recovered as aforesaid.

206 3. And afterwards, to wit, on the 22d of October, A. D. 1880, a second decree was made and entered by the court in this cause, by consent of all parties, appointing James Fitz Henry receiver to receive certain monies from the Wabash, St. Louis and Pacific Railway Company and to apply the same in payment *in payment* of certain claims in said decree specified, and the court in and by the said decree expressly reserved the right and power to appoint a receiver of the property of the said Missouri, Iowa and Nebraska Railway Company at the instance of any party interested therein, as in and by the record of the said decree, ready to be produced and proved as this honorable court may direct, reference being had thereto, will more fully and at large appear.

4. And thereupon the said receiver duly qualified and entered upon the discharge of the duties of his said trust; and a division of said district of Iowa having been made by act of Congress, the said cause was, by the consent of all parties, transferred to the division of said court, whereof the terms were held at the city of Keokuk, and the litigation in this suit has been at all times from the 22d day of October, A. D. 1880, down to appointment of Thomas Thacher as receiver herein, as hereinafter stated, active and continuous.

5. Heretofore, to wit, on the 12th day of February, A. D. 1880, pending the foreclosure proceedings herein and without the knowledge or consent of your orator, the said Missouri, Iowa and Nebraska Railway Company and the said Wabash, St. Louis and Pacific Railway Company and a committee of the holders of the majority of the bonds issued under the said mortgage of June 1st, A. D. 1870,

made and entered into a contract in writing whereby, among other things, it was agreed that the said Missouri, Iowa and Nebraska Railway Company should lease its road and other property to the said Wabash, St. Louis and Pacific Railway Company, and that the said Missouri, Iowa and Nebraska Railway Company, as a
207 primary and essential condition of the said contract, would cause all the bondholders holding bonds issued under and secured by the said mortgage of June 1st, A. D. 1870, to surrender their bonds and take in exchange therefor new bonds to be made by said Wabash, St. Louis and Pacific Railway Company and to be secured by a new mortgage to be made by the said Missouri, Iowa and Nebraska Railway Company upon its railway and other property, and that in the event of any holders of bonds under the said mortgage of June 1st, A. D. 1870, refusing to sanction said agreement, rendering a foreclosure neccessary, the bondholders' committee of the said majority would bid at the foreclosure sale; all of which will more fully and at large appear by refferance to a copy of said contract hereto attached and marked Exhibit "A" and made a part hereof as fully as if copied at large herein, the original of which your orator is ready to produce and prove as this honorable court may direct. The said Missouri, Iowa and Nebraska Railway Company never did cause all the holders of its bonds issued under and secured by the mortgage or deed of trust made by it to your orator June 1st, 1870, as aforesaid, to agree to surrender their bonds and to take in exchange therefor bonds to be made by the Wabash, St. Louis and Pacific Railway Company as aforesaid, nor did it ever cause all the holders of its said bonds actually to surrender the same and take in exchange therefor bonds to be made by the Wabash, St. Louis and Pacific Railway Company as aforesaid, and its said agreement so to do was broken and never fulfilled by it.

6. And afterwards, to wit, on the 3d day of September, A. D. 1880, a certain indenture of lease, a copy of which is hereto annexed, marked Exhibit "B," to which reference is hereby made as a part of this bill, and the original of which your orator is ready to produce and prove as this honorable court may direct, was made and entered into by and between the said Missouri, Iowa and Nebraska
208 Railway Company and the said Wabash, St. Louis and Pacific Railway Company, whereby, among other things, in pursuance of the said contract of the 12th day of February, A. D. 1880, the said Missouri, Iowa and Nebraska Railway Company leased its road and property to the said Wabash, St. Louis and Pacific Railway Company for the term of ninety-nine years, renewable forever, for a rental of thirty (30) per cent. of the gross earnings of said road and the property, to be applied and paid by said lessee, first, to the payment of all lawful taxes and assessments levied on said property; second, to the payment of the interest on the mortgaged bonds of the said lessor under its said mortgage, dated June 1st, 1870, and the supplementary indenture of March 1st, 1875; and, third, to the said lessor, on the first days of April and October in each year, the residue of said thirty (30) per cent. accruing from the earnings of the said property.

7. And thereupon the said Wabash, St. Louis and Pacific Railway Company entered into the possession of the road and property of the said Missouri, Iowa and Nebraska Railway Company, in pursuance of the terms and provisions of the said lease, and remained in the possession thereof under and by virtue of the said lease until the dates hereinafter stated.

8. And afterwards, to wit, on the 1st day of March, A. D. 1881, a certain indenture was made and entered into by and between the said Missouri, Iowa and Nebraska Railway Company and the said Mercantile Trust Company, as trustee, a copy of which is hereto annexed, marked Exhibit "C," and to which reference is hereby prayed as a part of this bill, the original of which your orator is ready to produce and prove as this honorable court may direct; whereby in pursuance of the said contract of the 12th day of February, A. D. 1880, and of the said lease of the 3d day of September, A. D. 1880, the said Missouri, Iowa and Nebraska Railway Company mortgaged its road and property aforesaid to the said Mercantile Trust Company, trustee, to secure the payment of two thousand two hundred and sixty-nine (2,269) bonds of one thousand
209 (1,000) dollars each, made by the said Wabash, St. Louis and Pacific Railway Company under and in pursuance of the said contract of the 12th day of February, A. D. 1880, and of the said lease of September 3rd, A. D. 1880, with interest thereon at the rate of six (6) per centum per annum, payable semi-annually on the first days of March and September in each year, which said bonds were made for the purpose of being exchanged for the former bonds made by the said Missouri, Iowa and Nebraska Railway Company and secured by the said mortgage of the 1st day of June, A. D. 1870, and in the said indenture of mortgage it was provided as follows, to wit: "All bonds that shall be received by said trustee in the course of said exchange shall be retained by said trustee for the protection *for* the persons who shall hold or own the bonds hereby secured in the event of any of the holders of the said Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange or claiming priority over those who shall make such exchange, and the bonds so received in exchange shall, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them and to prevent their use for any other purpose, be endorsed as follows: 'This bond has been deposited with the Mercantile Trust Company, trustee, under the provisions of a certain deed of trust or mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated March 1st, 1881, conveying to the Mercantile Trust Company, as trustee, the railroad of the Missouri, Iowa and Nebraska Railway Company. It is not assignable for any purpose, but is to be used only in foreclosure, if need be, in pursuance of said trust.'"

9. And afterwards, to wit, on the 28th day of March, A. D. 1882, a certain indenture was made and entered into by and between the said Missouri, Iowa and Nebraska Railway Company and said Wabash, St. Louis and Pacific Railway Company and the said Humeston and Shenandoah Railroad Company, a copy of which is hereto

annexed, marked Exhibit "D," and to which reference is hereby prayed as part of this bill, the original of which, as your
210 orator is informed and believes, is in the possession of the the said Humeston and Shenandoah Railroad Company, whereby, among other things, the said Missouri, Iowa and Nebraska Railway Company, for certain considerations therein stated, the sum of one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06), to be paid by the Humeston and Shenandoah Railroad Company, conveyed to the said Humeston and Shenandoah Railroad Company all that portion of the railroad of the Missouri, Iowa and Nebraska Railway Company extending from Humeston, in the county of Wayne, in the State of Iowa, to Van Wert, sometimes called Prairieville, in the county of Decatur, in the State of Iowa, being in the aggregate about seventeen and eight one-hundredths (17.08) miles in length, together with all and singular the road-bed, right of way, tracks, side tracks, turnouts, stations, depots, and depot grounds, shops, engine-houses, coal-houses, fuel-houses, and all lands, structures, and appurtenances intended for the use of the railway as described, and all embankments, fences, culverts, bridges, freight-houses, and other structures intended for the use of said road, which seventeen and eight one-hundredths (17.08) miles of railway and other property were a part of the road and property aforesaid of the said Missouri, Iowa and Nebraska Railway Company included in and conveyed by the said mortgage of the 1st day of June, A. D. 1870, and the said lease of the 3d of September, A. D. 1880, and the said mortgage of the 1st day of March, A. D. 1881; and the said Wabash, St. Louis and Pacific Railway Company, for certain considerations in and by said indenture, joined with the said Missouri, Iowa and Nebraska Railway Company in conveying the said railroad and property to the said Humeston and Shenandoah Railroad Company, and the said conveyance was, by the terms thereof, expressly made subject to the said mortgage of the 1st day of March, A. D. 1881, to the said Mercantile Trust Company, the same was expressly excepted from the warranty accompanying the said conveyance, and the said Humeston and Shenandoah Railroad Company, in and by the said indenture, for itself, successors, and assigns, covenanted and agreed to and with the said Missouri, Iowa and Nebraska Railway
211 Company and the said Wabash, St. Louis and Pacific Railway Company that it would pay and would bind itself, by good and sufficient bond under its corporate seal, to be executed and delivered simultaneously with the said indenture, to pay, on the first day of March, A. D. 1881, to the said Missouri, Iowa and Nebraska Railway Company, its successors or assigns, the sum of one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06), with the interest thereon at the rate of five (5) per cent. per annum, payable semi-annually, in United States gold coin, which said interest payments shall, so long as the mortgage aforesaid shall be a lien on the property thereby conveyed, be made to the Mercantile Trust Company, to be applied in the payment of the interest and principal of said bonds as the same shall from time to

time fall due; but it was agreed and understood in and by the said indenture that the aforesaid covenant and promise of the said Humeston and Shenandoah Railroad Company to pay the said consideration price, to wit, one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06), was upon the express condition that the title to the said property conveyed as aforesaid should be free and clear from all incumbrances created or suffered thereon by either the said Missouri, Iowa and Nebraska Railway Company or the said Wabash, St. Louis and Pacific Railway Company, and particularly from the incumbrance of said mortgage to the Mercantile Trust Company of date March 1st, A. D. 1881, and the agreement to pay the said semi-annual installments — interest was upon the express condition that the Humeston and Shenandoah Railroad Company should have and retain the quiet and peaceful possession of the property and premises conveyed as aforesaid and every part thereof, and in the event of a failure of the title of the said Missouri, Iowa and Nebraska Railway Company and of the said Wabash, St. Louis and Pacific Railway Company, or in case of the disturbance of the possession of said Humeston and Shenandoah Railroad Company by reason of foreclosure of said mortgage
212 or of the appointment of a receiver or from any other cause whatsoever, then the obligation of said Humeston and Shenandoah Railroad Company to pay said sum of one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06) as aforesaid or the said semi-annual installments of interest should immediately cease and determine, and said provisions and conditions were also inserted in the bond made by said Humeston and Shenandoah Railroad Company, as hereafter stated.

10. And at the same time as the execution and delivery of the said indenture last above stated the said Humeston and Shenandoah Railroad Company made, executed, and delivered to the said Missouri, Iowa and Nebraska Railway Company its promissory bond, under its corporate seal, whereby it promised and bound itself to pay on the 1st day of March, A. D. 1921, to the said Missouri, Iowa, and Nebraska Railway Company, its successors or assigns, the sum of one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06), with interest thereon at the rate of five (5) per cent. per annum, payable semi-annually, in United States gold coin; which said interest payments it promised, so long as the mortgage aforesaid *on* the first day of March, A. D. 1881, should be a lien on the property so conveyed to it as aforesaid, to pay to the said Mercantile Trust Company, to be applied to the payment of the interest and principal of said bonds of the Wabash, St. Louis and Pacific Railway Company dated on the 1st day of March, A. D. 1881, as aforesaid, which bond was subject to she same condition as those stated in the last paragraph.

11. And thereupon, under and in pursuance of the terms of the said indenture of conveyance of the 28th day of March, A. D. 1882, the said Humeston and Shenandoah Railroad Company took and entered into the possession of the said seventeen and eight one-hundredths (17.08) miles of railway and other property mentioned

in the said indenture of conveyance, and have continuously ever since held and retained possession thereof, and the said Humeston and Shenandoah Railroad Company at the time of making
213 and entering into the said indenture of the 28th day of March, A. D. 1882, and at the time of the execution and delivery of its bond aforesaid of date March 28th, 1882, and at the time of taking possession of said railway and other property knew and had notice of the said mortgage of date the first day of June, A. D. 1870, and of the default of the said Missouri, Iowa and Nebraska Railway Company in the payment of the interest of the bonds secured by said mortgage, and of the insolvency of the said Missouri, Iowa and Nebraska Railway Company, and of the bill filed in this cause by your orator, and of all subsequent proceedings in this cause, including the decree of foreclosure of said mortgage and order of sale of said railway and property made and entered on the 22d day of October, A. D. 1880, and took the said property with full knowledge of all said facts and subject to the said mortgage and decree in the same manner as the said Missouri, Iowa and Nebraska Railway Company, its grantor, the defendant herein, had held the same prior to the conveyance to the said Humeston and Shenandoh Railroad Company.

12. Default has been made by the said Humeston and Shenandoah Railroad Company in the payment of the semi-annual interest due on its bond of date March 28th, A. D. 1882, to the said Missouri, Iowa and Nebraska Railway Company, and the same remains overdue and unpaid. The installment of interest on the said bond which fell due in September, A. D. 1884, remains in default, overdue, and unpaid, and the same is true as to each installment of interest which has fallen due on said bond on every March and September since the last-mentioned date, and your orator is informed and believes that the said railway company has wholly neglected and refused to make any provision for the payment of the said interest incurred through the terms of said bond.

13. The said Humeston and Shenandoah Railroad Company is wholly insolvent, and has no property or assets, as your orator is informed and believes, except its railway and property con-
214 nected therewith. Its said railway and property is incumbered by a mortgage dated March 31st, 1881, to the extent of thirty thousand dollars ($30,000) per mile, bearing interest at the rate of seven per cent (7 %) per annum, payable semi-annually, said sum being greatly in excess of the value thereof, all the interest of which accruing after March 31st, 1881, as your orator is informed and believes, is in default, and the same remains overdue and unpaid, and the said Humeston and Shenandoah Railroad Company is unable to pay its debts and obligations, and, as your orator is informed and believes, there are taxes on the said property and premises conveyed as aforesaid by the said Missouri, Iowa and Nebraska Railway Company and the Wabash, St. Louis and Pacific Railway Company to the said Humeston and Shenandoah Railroad Company due and unpaid amounting to a large sum, and the said railway and property are in danger of becoming incumbered with the charges,

some of which may be superior and paramount to the lien of the said mortgage to your orator of date the 1st day of June, A. D. 1870, and entitled to be paid in preference to the bonds and interest coupons secured by the same; and the said Humeston and Shenandoah Railroad Company is also largely indebted to sundry and various persons. The rights and interests of your orator as trustee as aforesaid and of the holders of the bonds secured by the aforesaid deed of trust or mortgage will be greatly prejudiced, infringed, and impaired if the said Humeston and Shenandoah Railroad Company is permitted to retain the control and management of the said railroad and of the property conveyed by and described in the said deed of trust or mortgage. The property and premises so conveyed to the said Humeston and Shenandoah Railroad Company as aforesaid are and constitute very inadequate security for the payment of the amounts due the said bondholders and are and constitute very inadequate security for the payments of the amounts of principal and interest due on the said bond of the said Humeston and Shenandoah Railroad Company of date the 28th day of March, A. D. 1882,
215 and the entire property and premises conveyed by and described in the said deed of trust or mortgage to your orator of date the 1st day of June, A. D. 1870, and are and constitute very inadequate security for the payments of the amounts due the said bondholders, and are so situated that they cannot, nor can any part thereof, be sold in parcels, as they constitute one continuous line of railroad, which can only be worked and operated advantageously as such.

14. Your orator is informed and believes and therefore alleges that the said Wabash, St. Louis and Pacific Railroad Company became insolvent on or about May 28, 1884, and at that time its debts were largely in excess of the entire value of all its property, and it then ceased to pay its current obligations as the same fell due, and on that day the said Wabash, St. Louis and Pacific Railway Company filed its bill in equity in the circuit court of the United States within and for the eastern district of Missouri against the Central Trust Company, a corporation (which held a mortgage on all its property for sums greatly in excess of the value thereof), your orator, the said Mercantile Trust Company, the said Missouri, Iowa and Nebraska Railway Company, the said Humeston and Shenandoah railroad, and many others, alleging, among other things, its insolvent condition, and praying, among other things, the appointment of receivers to prevent its property from being wasted and sacrificed. All the defendants herein named were duly served with the process and appeared in the suit; and afterwards, to wit, on May 28th, 1884, Solon Humphreys and Thomas E. Tutt were duly appointed by said court receivers of all the property of the said Wabash, St. Louis and Pacific Railway Company. Afterwards the said Central Trust Company filed its bill in equity against the said Wabash, St. Louis and Pacific Railway Company and others for the foreclosure of its said mortgage in the circuit court of the State of Missouri within and for the city and county of St. Louis, and in the said suit the

defendants appeared, and thereupon the same was removed
216 to the said circuit court of the United States within and for the eastern district of Missouri, and was there*fore* duly consolidated with the suit brought by the Wabash, St. Louis and Pacific Railway Company as aforesaid, and the said receivers took possession of the said Missouri, Iowa and Nebraska railway and remained in possession and continued to operate the same until the appointment of Thomas Thacher as receiver by this court in this foreclosure cause, as hereinafter stated.

The said Wabash, St. Louis and Pacific Railway Company paid the coupon interest on its mortgage bonds up to and including the coupons which fell due March 1st, A. D. 1884, but no interest has been paid by it since that date. Default has been made by the said Wabash, St. Louis and Pacific Railway Company in the payment of the rental provided for in the said indenture of lease made the 3rd day of September, A. D. 1880, as aforesaid, and in payment of the lawful taxes and assessments levied on the said property, and in payment of the interest on the mortgage bonds of the said Missouri, Iowa and Nebraska Railway Company under its deed of trust or mortgage aforesaid dated June 1st, A. D. 1870, and the supplementary indenture of March 1st, A. D. 1875, and its payment to the said Missouri, Iowa and Nebraska Railway Company of thirty per cent. (30 per cent.) of the gross earnings of the said Missouri, Iowa and Nebraska railway and property. The installment of rent and interest which fell due on the 1st day of April, A. D. 1884, remains in default, overdue, and unpaid, and the same is true as to each instalment of interest, taxes, and rental which has fallen due since the last-mentioned date, and the said receivers of the said Wabash, St. Louis and Pacific railway property have utterly and wholly failed to pay any part of the said taxes, interest, or rental, and, in view of being so able and unwilling to pay installments of taxes, interest, and rental provided for by said lease, the said receivers
were, by the court which had appointed them, directed to
217 abandon the rights of the said Wabash, St. Louis and Pacific Railway Company under the said indenture of lease dated September 3, A. D. 1880, and the possession of the property described therein, and to turn the property over to Thomas Thacher, the receiver appointed as hereinafter stated.

15. And in the said consolidated cause of The Central Trust Company of New York and others, complainants, against The Wabash, St. Louis and Pacific Railway Company and others, defendant-, pending as aforesaid in circuit court of the United States for the eastern district of Missouri, your orator, as defendant therein, filed its petition therein February 2nd, A. D. 1885, alleging certain of the facts heretofore in this supplemental bill stated, and praying that the said court would make such orders as might be necessary and proper to enable it to execute the decree of this court of October 22nd, 1880; and afterwards, to wit, on the 9th day of June, A. D. 1885, *and* the said court ordered, adjudged, and decreed that Thomas Thacher, of the city of New York, be appointed receiver of all and singular the property and franchises of the said Missouri,

Iowa and Nebraska Railway Company, including the line of railroad of said company extending from Keokuk, in the State of Iowa, to Van Wert, in the said State, together with all and singular the appurtenances in anywise thereto appertaining, and further ordered, adjudged, and decreed that the defendant The Wabash, St. Louis and Pacific Railway Company and the receivers thereof appointed in said cause deliver up and render to the said Thomas Thacher as such receiver all and singular the property and premises above described on or before the 1st day of July, A. D. 1885.

16. A majority of the holders of the bonds of the said Missouri, Iowa and Nebraska Railway Company secured by the mortgage to your orator of date the 1st day of June, A. D. 1870, consented to the arrangement embodied in the agreement aforesaid of Feb. 12th, A. D. 1880, in the lease aforesaid of date the 3rd day of September, A. D. 1880, and in the mortgage to the Mercantile Trust
218 Company aforesaid of date the 1st day of March, A. D. 1881, and received, as your orator is informed and believes, new bonds made, executed, and delivered to them by the said Wabash, St. Louis and Pacific Railway Company in pursuance of the said arrangement, but the bonds themselves, having been deposited with your orator long before, remained so deposited, nor have they ever been stamped as in the mortgage to the Mercantile Trust Company *as* provided, your orator's receipts for said bonds having been used instead of the bonds themselves for the purposes of exchange, as your orator is informed and believes. Your orator is informed and believes and therefore alleges that the holders of seventeen (17) of the old Missouri, Iowa and Nebraska bonds or thereabouts for one thousand dollars ($1,000) each never assented to the arrangement or received or consented to receive the new bonds of the said Wabash, St. Louis and Pacific Railway Company in exchange for their old securities, but refused so to do. Your orator was no party to any of the said agreements between said bondholders and the Wabash, St. Louis and Pacific Railway Company and the said Mercantile Trust Company, trustee, and each and every of the said agreements was made without the knowledge, consent, or concurrence of your orator.

17. Your orator is informed and believes and therefore alleges that one O. C. Du Sochet is the owner of fourteen (14) of the seventeen (17) old bonds of the said Missouri, Iowa and Nebraska Railway Company whose owners did not assent to the arrangement for an exchange as aforesaid. Said O. C. Du Sochet, on June 29th, A. D. 1885, filed his intervening petition herein, wherein he averred that he was the owner of the said fourteen (14) bonds; that all of the other bonds and coupons secured by said mortgage of June 1st, A. D. 1870, and by the decree of foreclosure of October the 22nd, A. D. 1880, except his own bonds and coupons and three other bonds and the coupons attached thereto and certain coupons belonging to William Hill and the Chase National bank, had
219 been paid off and discharged, and prayed for the appointment of a receiver of all and singular of said mortgage property to care for and preserve the same, with such other powers as —

the court may seem fit, and further prayed the court to carry into execution the decree of this court of date October 22nd, A. D. 1880, and the subsequent decrees and orders made and entered by the court, and your orator prays to refer to said petition as a part hereof, and the said O. C. Du Sochet, in and by said petition, intended to claim and did claim that the bonds and coupons exchanged as aforesaid by a majority of the bondholders under the said mortgage to your orator of date June 1st, A. D. 1870, for the new bonds of the said Wabash, St. Louis and Pacific Railway Company had the effect to pay off, cancel, and discharge the said bonds and coupons so exchanged as aforesaid, and the said O. C. Du Sochet, in and by his said petition, intended to and did refuse to exchange his said bonds and intended to and did claim priority over those who had made such exchange.

18. Your orator is informed and believes and therefore alleges that it was not the intention of that part of the holders of the bonds of the Missouri, Iowa and Nebraska Railway Company aforesaid or any of them or of the committee acting for them who made this arrangement that the old bonds of the said Missouri, Iowa and Nebraska Railway Company secured by mortgage of June 1st, A. D. 1870, should in any case be cancelled or said decree herein of October 22nd, A. D. 1880, vacated or annulled or the right to execute the same be in any way abrogated or impaired; but your orator avers that, on the contrary, it was the design and intention that the old bonds of the Missouri, Iowa and Nebraska Railway Company aforesaid having been exchanged should remain in the hands of the Mercantile Trust Company to be used, as stated, in said mortgage for foreclosure, if need be, in pursuance of the trust; and your orator is further advised and therefore alleges that, as the holders of said seventeen (17) bonds have not assented and do not assent to the exchange, but refuse so to do, and especially as the holder of fourteen (14) of them has absolutely in this very cause, in and by the afore-
220 said petition, claimed a priority over the holders of the *holders of the* other bonds of the Missouri, Iowa and Nebraska Railway Company aforesaid, it is its duty to proceed under the decree herein rendered and *sold* the mortgaged property for the benefit of the bondholders. It is further advised and therefore alleges that the technical owner of the said Missouri, Iowa and Nebraska Railway Company bonds which have been exchanged, being all except seventeen (17), is the Mercantile Trust Company, as trustee under the mortgage of date March 1st, A. D. 1881, hereinabove set forth.

19. And afterwards, to wit, on the 30th day of June, A. D. 1885, your orator filed herein his petition praying that Thomas Thacher be appointed receiver herein of all and singular the property and franchises of the defendant company, Missouri, Iowa and Nebraska Railway Company; and afterwards, to wit, on the 2d day of July, A. D. 1885, the said petitions came on to be heard and the court, on consideration thereof, ordered, adjudged, and decreed that the said Thomas Thacher be appointed receiver in this cause of all and singular the property and franchises of the defendant The Missouri, Iowa and Nebraska Railway Company, including the entire rail-

way and property from Keokuk to Van Wert, and ordered him to receive and take immediate possession of the same from Messrs. Humphreys and Tutt, the receivers then and theretofore in possession thereof, and thereafter the said Thomas Thacher duly qualified as such receiver, and the said Humphreys and Tutt then delivered to him as such receiver the possession of said railway, with the exception of seventeen and eight one-hundredths (17.08) miles from Humeston west which was in the possession of said Humeston and Shenandoah Railroad Company; and thereupon said Thomas Thacher made demand upon said Humeston and Shenandoah Railroad Company to deliver to him as such receiver the said seventeen and eight one-hundredths (17.08) miles, but the said Humeston and Shenandoah Railroad Company refused so to do and have
221 ever since retained and now hold the possession of seventeen and eight one-hundredths miles and operates the same in violation and contempt of the said orders of the court appointing Thomas Thacher as such receiver; and your orator is informed and believes that the said Humeston and Shenandoah Railroad Company claims that the lease by the said Missouri, Iowa and Nebraska Railway Company to the said Wabash, St. Louis and Pacific Railway Company was with the knowledge and consent of your orator, which is untrue, and that said Humeston and Shenandoah Railroad Company further claim that your orator and the holders of the bonds secured by the said mortgage to the said Mercantile Trust Company consented to a pretended sale of said *eighteen* and eight one-hundredths (17.08) miles of said railway to the said Humeston and Shenandoah Railroad Company, which claim as to your orator, your orator says, is false of its own knowledge, and which claim as to said bondholders your orator alleges on information and belief to be false.

20. The said defendant The Missouri, Iowa and Nebraska Railway Company is wholly and utterly insolvent, and has no property or assets, as your orator is informed and believes, except those conveyed by said deed of trust or mortgage, and is unable to pay its debts and obligations.

21. On the 4th day of January, A. D. 1885, your orator was requested by and on behalf of nearly all those interested in said bonds to proceed to execute the said decree herein of October 22d, A. D. 1880, and to advertise the property for sale under the same. In view of the said request your orator forthwith requested the master named in said decree to proceed to advertise under the same and to execute the said decree as therein provided, but the said master declined to proceed to execute the said decree and to carry out the said request of your orator, stating as a reason therefor, among other things, that certain parties claim that your orator has no right to have the said decree executed. Thereupon your orator filed a petition in this cause praying for an order upon the master to execute the said decree, and as a result of the action of the
222 court thereon your orator files this its supplemental bill, not hereby, however, in any way vacating or opening or amending the decree already had herein, nor relinquishing or waiving

any rights or privileges which it has under said decree or consenting that the same be done by the court or in any other way, and your orator charges that the said decree is in full force, and that each and every party hereto has and had at the time of making and entering of said decree and ever since has had full and complete notice of the said decree and of all the pleadings and proceedings in this cause.

22. In consequence of the embarrassed condition of the financial affairs of the defendant, the said Missouri, Iowa and Nebraska Railway Company, and of the said Humeston and Shenandoah Railroad Company, and on account of the many difficulties and complications which are manifest upon and from the allegations hereinbefore contained and involved in the execution of your orator's said trust and arising since the former decree made and entered herein by this court on the 22d day of October, A. D. 1880, *and* your orator is advised and believes that it cannot proceed without the further aid and interposition of this honorable court in chancery sitting, nor can the said trust be executed, as your orator is advised and charges, and the rights of all parties interested be ascertained and fully protected in the premises otherwise than by judicial sale of the said railroad and all its equipments and appurtenances covered by said deed of trust or mortgage. Till such sale can be had and the proceeds thereof be distributed, your orator is likewise advised and charges that it is expedient and necessary that the seventeen and eight one-hundredths (17.08) — of the said railway and the other property belonging thereto now in the hands of the defendant The Humeston and Shenandoah Railroad Company, with its equipment and all the rights, franchises, and property appurtenant thereto, of whatsoever name, nature, or description, be placed in the hands
223 and under the control of the said Thomas Thacher, the receiver heretofore appointed herein for that purpose.

23. Your orator is informed and believes and therefore alleges that the said Thomas Thacher, as receiver, has incurred some indebtedness and issued some certificates therefor, under the directions of and with the consent of the court, which should be provided for in the sale of the mortgaged property.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed and may appear and answer in the premises, and that as fully as though thereunto especially interrogated, but not under oath, and answer under oath by the defendants and each and every of them being hereby expressly waived, pursuant to the amendment to the XLI rule of practice for the courts of equity of the United States, and that your orator may have the full benefit of the said suit against all of the defendants herein named, and may have the same relief against each and every of the defendants as your orator might or could have had against the defendant The Missouri, Iowa and Nebraska Railway Company in case *of* the matters subsequent to the said decree herein averred had not occurred, and that the former decree made herein may be promptly and immediately executed, and that your

orator may have such other and further relief in the premises as to your honors may seem meet—

May it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said Missouri, Iowa and Nebraska Railway Company, the said Wabash, St. Louis and Pacific Railway Company, and said Humeston and Shenandoah Railroad Company, and the said Mercantile Trust Company, thereby commanding them and every of them, at a certain day and under a certain pain to be therein specified, personally to be and appear before your honors and this honorable court, and then and there to answer all and singular the premises and to stand to, perform, and abide by such order
224 and decree therein as to your honors shall seem meet; and your orator will ever pray.

THE FARMERS' LOAN AND TRUST COMPANY,
[L. S.] By R. G. ROLSTON, *President.*

TURNER, LEE & McCLURE,
Complainant's Solicitors.
HERBERT B. TURNER, *Of Counsel.*

225 I.

(*Copy of Final Decree of Foreclosure.*)

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division.

THE FARMERS' LOAN AND TRUST COMPANY, Complainant,
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, THE Mercantile Trust Company, The Wabash, St. Louis and Pacific Railway Company, and The Humeston and Shenandoah Railroad Company, Defendants.

Decree.

In this cause The Mercantile Trust Company and The Humeston and Shenandoah Railroad Company, defendants, having appeared to and answered the supplemental bill of complaint of the complainant, and the cause having been set down for hearing upon the said supplemental bill and the said answers, and the said Humeston and Shenandoah Railroad Company having filed its cross-bill against the complainant, the Missouri, Iowa and Nebraska Railway Company, and Thomas Thacher, receiver, and the defendants to said cross-bill having demurred thereto, and the defendants The Missouri, Iowa and Nebraska Railway Company and The Wabash, St. Louis and Pacific Railway Company having each entered its appearance to the said supplemental bill and each of them having failed to file its reply, demur-er, or answer to the said supplemental bill in the clerk's office on the rule day next succeeding that of

entering its appearance, and thereupon, in default thereof, the complainant having entered an order in the order book that said supplemental bill be taken *pro confesso*, and more than thirty days having elapsed from and after the entry of said order, it is now ordered, adjudged, and decreed that the said supplemental bill be taken as true and confessed as against the said defendants, The Missouri, Iowa and Nebraska Railway Company and The Wabash, St. Louis and Pacific Railway Company, and each of them.

And now, on this day, this cause came on to be heard upon
226 the said supplemental bill and the answers thereto aforesaid and upon the said demurrer to the said cross-bill, and the same were argued by counsel; and thereupon it was ordered, adjudged, and decreed as follows, to wit:

That the said demurrer to the said cross-bill be, and the same is hereby, overruled; and it is further ordered, adjudged, and decreed that the equities are with the complainant, and that the facts and circumstances set forth in the supplemental bill of complaint herein are in substance true; that the decree of foreclosure and sale made and entered herein on the 22nd day of October, A. D. 1880, is still in full force and is not reversed, vacated, or in any manner satisfied, cancelled, or discharged.

That on the 12th day of February, 1880, pending the foreclosure proceedings herein, the Missouri, Iowa and Nebraska Railway Company and the Wabash, St. Louis and Pacific Railway Company and the committee of the holders of the majority of the bonds of June 1st, 1870, secured by the mortgages made by the complainant, made and entered into a contract in writing, a copy of which is annexed to the supplemental bill herein.

That on the 3rd day of September, 1880, an indenture of lease was made and entered into by and between the said railway companies, copies of which are annexed to the supplemental bill of complaint herein, whereby the Missouri, Iowa and Nebraska Railway Company leased its road and property to the Wabash, St. Louis and Pacific Railway Company for ninety-nine years on certain terms and conditions.

That the Wabash, St. Louis and Pacific Railway Company entered into possession of the road and property of the Missouri, Iowa and Nebraska Railway Company in pursuance of the terms and provisions of said lease.

That on March 1st, 1881, an indenture of mortgage was made between the Missouri, Iowa and Nebraska Railway Company
227 and the defendant The Mercantile Trust Company, trustee, a copy of which is annexed to the supplemental bill of complaint herein, by which the Missouri, Iowa and Nebraska Railway Company mortgaged its road and property to the Mercantile Trust Company to secure the payment of a series of bonds of the Wabash, St. Louis and Pacific Railway Company made under the contract of February 12th, 1880, and the lease of September 3rd, 1880, which bonds were made for the purpose of being exchanged for the existing bonds of the Missouri, Iowa and Nebraska Railway Company secured by the mortgages to the complainant herein, and which mortgage to

the Mercantile Trust Company provided in substance that all the bonds received by the Mercantile Trust Company as trustee thereunder in the course of such exchange should be retained by such trustee for the protection of persons who should hold or own the bonds thereby secured in the event of any holder or holders of the Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange or claiming priority over those who should make such exchange, and that the bonds so received in exchange should, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them, be endorsed to the effect that they were deposited with the Mercantile Trust Company, trustee, under the provisions of said mortgage deed and were not assignable for any purpose, but were to be used only in foreclosure, if need be, in pursuance of the trust.

That on the 28th day of March, 1882, an indenture was made between the Missouri, Iowa and Nebraska Railway Company, the Wabash, St. Louis and Pacific Railway Company, and the Humeston and Shenandoah Railroad Company, a copy of which is annexed to the supplemental bill of complaint herein, whereby the Missouri, Iowa and Nebraska Railway Company, for certain considerations therein stated, conveyed to the Humeston and Shenandoah Railroad Company that portion of the railroad of the Missouri, Iowa and Nebraska Railway Company extending from Humeston,
228 in the county of Wayne, in the State of Iowa, to Van Wert, sometimes called Prairieville, in the county of Decatur, in the State of Iowa, being in the aggregate about 17.08 miles in length, with the appurtenances thereof, which property so conveyed was a part of the road and property of the Missouri, Iowa and Nebraska Railway Company included in and conveyed by the mortgages to the complainant herein.

That the Humeston and Shenandoah Railroad Company thereupon, in pursuance of said indenture, entered into possession of the said property so conveyed to it as aforesaid, but that it had actual knowledge at the time of the existence of the mortgages made to the complainant herein, to foreclose which the original bill herein was filed, and of the existence of the decree of foreclosure and sale entered herein October 22nd, 1880.

That the holders and owners of three thousand and eight (3,008) bonds of the three thousand and twenty-five (3,025) bonds outstanding and existing under the mortgage of June 1st, 1870, made to the complainant herein and mentioned in the decree of October 22nd, 1880, exchanged the same under and in pursuance of the provisions of the agreements above stated for two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis & Pacific Railway Company of one thousand dollars ($1,000) each, secured by the mortgage so made to the Mercantile Trust Company as aforesaid, and for seven hundred and fifty-two thousand dollars ($752,000.00) of the preferred stock of the Wabash, St. Louis and Pacific Railway Company, but that the holders of seventeen (17) of said bonds of June 1st, 1870, did not exchange them for such bonds of the Wabash, St. Louis and Pacific Railway Company, but still hold

and own the same; that the said three thousand and eight (3,008) bonds of June 1st, 1870, were, after such exchange, held by the Mercantile Trust Company as trustee for the holders of the two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company and as collateral security for
229 said two thousand two hundred and fifty-six (2,256) bonds; that the holders and owners of seventeen (17) of the bonds of the Missouri, Iowa and Nebraska Railway Company of June 1st, 1870, secured by the mortgages to the complainant herein, did not exchange their said bonds for bonds of the Wabash, St. Louis and Pacific Railway Company, but, on the contrary, refused and still continue to refuse to exchange the same and have claimed and still continue to claim priority over the holders of said bonds who have made such exchange.

That there is now due and unpaid upon each of the said Wabash, St. Louis and Pacific Railway Company's bonds the sum of one thousand one hundred and forty-nine dollars and ten cents ($1,149.10), and upon all of the said two thousand two hundred and fifty-six (2,256) Wabash, St. Louis and Pacific Railway Company's bonds in the aggregate sum of two million five hundred and ninety-two thousand three hundred and sixty-nine dollars and sixty cents ($2,592,369.60), with interest thereon at the rate of six per centum (6 %) per annum from the date of this decree, payable semi-annually.

That there is now due and unpaid upon each of the said three thousand and twenty-five (3,025) Missouri, Iowa and Nebraska Railway Company's bonds of June 1st, 1870, the sum of two thousand two hundred and sixty-six dollars and seventeen cents ($2,266.17), with interest from the date of this decree on the principal sums at the rate of seven per cent. per annum, payable semi-annually, and on the interest at the rate of six per centum per annum, and upon the said seventeen (17) Missouri, Iowa and Nebraska Railway Company's bonds in the aggregate the sum of thirty-eight thousand five hundred and twenty-four dollars and ninety cents ($38,524.90).

That all the costs and expenses of this suit, the allowances for compensation, disbursements, and expenses of the complainant, and the allowances to counsel, so far as the same were ordered to be paid on the former decree herein of October 22nd, 1880, have been paid.

230 That the defendant The Missouri, Iowa and Nebraska Railway Company has wholly failed and neglected to pay the amount due upon the bonds and mortgages mentioned in the said decree, as required therein, and still continues to so neglect and refuse and has made default therein.

That the holders of the said seventeen (17) bonds and coupons thereto annexed are entitled to have the said decree of October 22nd, 1880, enforced for their benefit, as to the amount due on their bonds, to the same extent that the holders of the other three thousand and eight (3,008) bonds of June 1st, 1870, are entitled to have the same enforced, and that they have no priority over the holders of the said three thousand and eight (3,008) bonds, but that the de-

cree must be executed for the benefit of all parties interested in the said three thousand and twenty-five (3,025) bonds equally and *pro rata* as against each other.

Wherefore the court doth further order, adjudge, and decree that the said defendant The Missouri, Iowa and Nebraska Railway Company do, within five (5) days from and after the date of this decree, pay the amounts due on the bonds and coupons aforesaid, together with the costs and expenses of this suit, to be taxed; that in default whereof the mortgaged premises described in the said decree of October 22nd, 1880, be sold at public auction at the front door of the building in which the United States courts are held, in the city of Keokuk, in the State of Iowa, by P. T. Lomax, Esq., a master of this court, and that the compensation of such master shall hereafter be fixed by the court. The said master is hereby directed to give notice of the time and place of such sale by advertising the same in the Daily Gate City, a newspaper published at Keokuk, in the State of Iowa, and in the Commercial and Financial Chronical, a newspaper published in the city of New York, in the State of New York, once a week for four (4) successive weeks.

231 The last one of such insertions shall be at least ten (10) and not more than twenty (20) days before such day of sale, which notice shall contain a brief description of the property to be sold; that the mortgaged property be sold absolutely and not subject to statutory redemption, but the same shall be sold in two parcels, the first of said parcels which shall be so sold to include all of the mortgaged property except the seventeen and eight one-hundredths ($17\frac{8}{100}$) miles of said railway, extending from Humeston, in the State of Iowa, to Van Wert, in the State of Iowa, and the second of said parcels to include said seventeen and eight one-hundredths ($17\frac{8}{100}$) miles of said railway, which said second parcel shall be sold in case there be not realized from the sale of the first parcel enough to pay all the moneys found due, as above stated, and that any party to this suit or any of the bondholders whom such party may request may bid for and purchase the said property or either parcel thereof; that the said master shall adjourn and postpone the said sale from time to time without further advertisement if so requested by the complainant or its solicitor or counsel; that the said master shall require the purchaser to pay in cash or receiver's certificates authorized to be issued by order of this court in this cause by Thomas Thacher, receiver, on the day of sale the sum of three hundred and twenty-five thousand dollars ($325,000.00), and the balance of the said purchase-money may at the time of the delivery of the master's deed be paid in cash or in the receiver's certificates aforesaid or in the bonds and coupons of June 1st, 1870, secured by the mortgages above mentioned, which bonds and coupons shall be received and accepted in payment of said balances to the extent and for the amount which the holders thereof will be entitled to receive in the distribution of the proceeds of sale, as hereinafter provided.

That at and upon the making of said sale the said master shall make and execute a proper and suitable deed or deeds or instru-

ments of conveyance of the said mortgaged premises and property to the purchaser or purchasers at the said sale, and that he
232 also forthwith report to this court, if in session; if not in session, then to the next term thereof, the said sale for approval and confirmation, and upon the approval and confirmation of the said sale the said deed or deeds shall be delivered to the said purchaser or purchasers, and upon his or their paying the amount of the purchase price thereof he or they shall — put into possession of the mortgaged premises and property; that out of the cash payment to be made by the purchaser or purchasers as herein ordered there shall be paid by the said master the following sums:

First. The fees of the master for his services in executing this decree and his necessary and reasonable expenses and disbursements.

Second. The other proper costs of this suit to which the complainants are entitled, to be taxed by the clerk of this court.

Third. All certificates heretofore issued by Thomas Thacher, the receiver heretofore appointed herein under the orders of this court, which have not been received by the said master in payment of purchase-money, as hereinabove provided.

The balance of the proceeds of sale up to the full amounts herein and hereby found due on the seventeen (17) bonds aforesaid of June 1st, 1870, and on the two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company aforesaid shall be paid over by the master to the complainants herein as trustee in order that the complainant in the execution of its trust may distribute same, which it shall do as follows:

Seventeen three thousand and twenty-fifth ($\frac{17}{3025}$) portions thereof to the holders of the said seventeen (17) bonds and coupons as aforesaid *pro rata* among the several holders thereof, and three thousand and eight three thousand and twenty-fifth portions ($\frac{3008}{3025}$) to the holders of the two thousand two hundred and fifty-six (2,256) bonds made by the Wabash, St. Louis and Pacific Railway Com-
233 pany March 1st, 1881, to be distributed *pro rata* among the several holders of the said two thousand two hundred and fifty-six (2,256) bonds until the said two thousand two hundred and fifty-six (2,256) bonds are paid in full, after which the entire residue, if any, shall be paid to the holders of the said seventeen (17) bonds until they are paid in full. If such balance of the proceeds of sale, however, shall be more than sufficient to pay the amounts found due or to become due herein upon the said seventeen (17) bonds of the Missouri, Iowa and Nebraska Railway Company of June 1st, 1870, and the said two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company of March 1st, 1881, as aforesaid, then the balance, after the payments aforesaid, shall be paid into court to await the further order of this court for the disposition thereof; that upon the confirmation of the said sale the Missouri, Iowa and Nebraska Railway Company and the other defendants and all or any person or persons, party or parties, claiming or — by or under them or either or any of them shall be absolutely barred, foreclosed, and precluded from all

right, title, interest, claim, or equity of redemption in or to the whole or to any part of the above-described premises or property.

And it is further ordered, adjudged, and decreed that the defendants, The Missouri, Iowa and Nebraska Railway Company, The Humeston and Shenandoah Railroad Company, and The Mercantile Trust Company, shall each make and execute and deliver to the purchaser or purchasers at the said sale, when the said sale shall have been approved and confirmed by the court, proper and suitable deeds or instruments of conveyance of the said mortgaged premises and property conveying to the said purchaser or purchasers all the right, title, and interest of the said defendants of, in, and to the mortgaged premises and every parcel thereof.

O. C. Dusonchet, claiming to be the holder of fourteen (14) of the seventeen (17) bonds aforesaid, having applied herein for leave to be made a party defendant hereto, the court denies such ap-
234 plication, but this decree is made and entered and the denial of such application is made without prejudice to any of the claims of the holder of any of said fourteen (14) bonds.

Any and all questions on behalf of the holder of said fourteen (14) bonds that may exist of any kind as to the payment of said bonds, coupons, and interest, and including any question as to the right of the holder of said bonds to priority of payment or amount thereof or proportion of proceeds of sale, are expressly reserved for future consideration, and any holder of such bonds is given until the decree of confirmation to file his petition of intervention; and if any holder thereof shall fail to intervene by such time, then distribution shall be made as hereinbefore indicated; but if such petition be filed by such time, then no distribution shall be made by the trustee until the further order of this court, and the court retains jurisdiction therefor.

And it is further ordered, adjudged, and decreed by the court that nothing herein contained shall be taken or construed to prejudice that part of the cross-bill of the Humeston and Shenandoah Railroad Company making a claim for improvements, and the same shall be heard and determined upon issues joined, precisely as if this decree had not been rendered prior to the disposition of that part of the said cross-bill, and the said defendants in the said cross-bill are now hereby assigned to answer that part of said cross-bill on or before the August rule day, but this cause shall not affect the foreclosure of the mortgage or the sale of the property as hereinbefore decreed.

And it is further ordered, adjudged, and decreed that this cause, as to all the matters now in controversy or hereafter coming in controversy between the plaintiff and any and all the intervening claimants, including those who may intervene in the future on claims now or hereafter in existance, is continued until the further order of the court, and such rights and claims and matters in
235 controversy are in nowise affected or determined by this decree; but this clause shall not affect the foreclosure of the mortgage or the sale of the property as hereinbefore decreed.

(Sig.) J. W. LOVE, *Judge.*

Signed July 8th, 1886.

236 J.

(*Copy of Report of Sale by Master in Chancery.*)

In the United States Circuit Court, Southern District of Iowa, Eastern Division.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY *et al.*
} In Equity. Original Bill.

and

LEE, HIGINSON & COMPANY, Cross-Complainants,
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY Co., The Farmers' Loan and Trust Co., and Others, Cross-Defendants.
} Cross-Bill.

Report of sale.

To the honorable judges of said court, in chancery sitting:

In pursuance of decretal ordres of this honorable court made in the above cause and dated respectively October 22nd, 1880, and July 8th, 1886, I, the undersigned, standing master of said court, do respectfully report—

That all and singular the mortgaged premises mentioned in the complainants' bill and in the said decretal orders in this cause were sold by me at public auction, at the front door of the building in which the United States courts are held in the city of Keokuk, in said district and division, on the nineteenth day of August, 1886; that previous to said sale I gave four successive weeks' public notice, once a week, of the time and place thereof by advertisement, containing a brief description of such premises, published in the Gate City, a newspaper published at Keokuk, in the State of Iowa and district aforesaid, and also in the Commercial and Financial
237 Chronical, a newspaper published in the city of New York, copies of which notice, with affidavits of publication, I hereto attach, marked "A" and "B" and made part of this report, the last one of which insertions being on the seventh day of August, 1886, and at least ten and not more than twenty days before such day of sale; that at such sale the said premises were, as directed by said decree of July the eight, 1886, sold in two parcels, therein described. I first offered for sale the — parcel of said premises, being all of the mortgaged property except the seventeen and eight one-hundredth-miles of said railway extending from Humeston, in the State of Iowa, to Van Wert, in the State of Iowa, and Morris K. Jessup and Henry C. Thacher, constituting a committee of the bondholders, bid therefor the sum of five hundred thousand dollars ($500,000.00).

And, that not being enough to pay all the moneys found due in said decree, I next offered for sale the second parcel of said railway

property, being the seventeen and eight one-hundredths miles above mentioned, extending from Humeston, in the State of Iowa, to Van Wert, in the State of Iowa, and the said Morris K. Jessup and Henry C. Thacher, committee as aforesaid, bid therefor the sum of one hundred thousand dollars ($100,000.00).

And the said Morris K. Jessup and Henry C. Thacher, said committee of bondholders, being the best and highest bidders for said two parcels above described, the same were struck off to them, as such committee of bondholders, as the purchasers thereof.

That the amount of moneys found due in said decree of July eighth, 1886, was as follows:

238	July 8, 1886, princ. of 2,256 W., St. L. & P. R'y bonds, $1,000, & int.		$2,592,369 60
	Int., 6, to Aug. 19, 1886		17,714 52
	Princ. of 17 M., I. & N. bonds, $1,000, & int.		38,524 90
	Int., 7, on $17,000, part thereof		135 53
	Int., 6, on $21,524.90, remainder		147 09
	To which add certificates of rec'v'r		235,375 00
	Int. on same		11,868 00
	And loans on certificates		84,516 00
	Int. on same		2,535 00
			$2,983,185 64

To which add costs of court, viz:

Clerk	$245 34	
Marshal	7 75	
Printer's bill	139 90	
Master's fees for sale, disburs-ments of proceeds, and deed	4,575 00	
		4,967 79
Total		$2,988,153 63
Less amount of bid		600,000 00
Balance		$2,388,153 63

And I further report that the said purchasers did on the day of sale deliver to me a certificate of deposit of the Metropolitan Trust Company of the City of New York for the sum of three hundred and twenty-five thousand dollars ($325,000.00) for the cash payment required of the purchaser by the terms of the decree herein, and which I received as such payment.

All of which is respectfully submitted, reserving the privilege to make a further and supplemental report as to the disbursements of the proceeds of sale upon a confirmation of the said sale in accordance with the rule of practice of this court.

(Signed) P. T. LOMAX,
Master in Chancery.

August 20th, 1886.

Endorsed: Filed Aug. 20, 1886.
20—780

239 K.

(*Copy of Decree and Order of the U. S. Cir. Court at St. Louis, Mo., Appointing Thomas Thacher Receiver of the M., I. & N. R'y Co.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

THE CENTRAL TRUST COMPANY OF NEW YORK and Others, Complainants, *vs.* THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*, Defendants.	Consolidated Cause. Nos. 2357 and 2464.

Order appointing Thomas Thacher receiver of the Missouri, Iowa & Nebraska Railway Company.

JUNE 9TH, 1885.

The defendant The Farmers' Loan and Trust Company having filed its petition herein February 2, 1885, alleging, among other things, that it is trustee under certain mortgages made to it by the Missouri, Iowa & Nebraska Railway Company; that December 30th, 1879, it filed a bill in the circuit court of the United States for the district of Iowa for the foreclosure of said mortgages; that a decree of foreclosure and sale was made by said court October 22d, 1880, which decree, however, has never been executed; that about September 3d, 1880, the said railway company leased its road and property to the Wabash, St. Louis & Pacific Railway Company, which covenanted to maintain and operate said leased line, setting aside 30 per cent. of the gross earnings, from which were to be paid taxes and interest on the bonds secured by the mortgages made to the petitioner, the Wabash, St. Louis & Pacific Railway Company guaranteeing that such interest should not be less than at the rate of four and one-half per cent. per annum upon the par value
240 of said bonds; that other agreements were entered into between the parties interested, and, in pursuance thereof, the Missouri, Iowa & Nebraska Railway Company made a mortgage, dated March 1st, 1881, to the Mercantile Trust Company, as trustee, to secure certain bonds of the Wabash, St. Louis & Pacific Railway Company, issued for the purpose of being exchanged for the bonds secured by the mortgages made to the petitioner, which exchanged bonds were to be stamped and retained by the new trustee for the protection of the persons so exchanging, it being the desire and intention of the parties at the time not to cancel the Missouri, Iowa & Nebraska Railway Company's bonds or extinguish the lien of the mortgages given to the petitioner to secure the same, but, on the contrary, to retain the same as outstanding liens; that the aforesaid bonds — secured by the aforesaid mortgages to the petitioner, who consented to this arrangement, received the bonds of the Wabash, St. Louis & Pacific Railway Company issued in pursuance of said arrangement, but that the Missouri, Iowa & Nebraska Railway

Company's bonds which were deposited with the petitioner for the purposes of foreclosure, being 2,975 in number, remain so deposited and have never been withdrawn from the custody of the petitioner and have never been stamped; that the holders of 17 of the Missouri, Iowa & Nebraska Railway Company's bonds have never assented to the new arrangement or received or consented to receive the bonds of the Wabash, St. Louis & Pacific Railway Company in exchange for their said bonds; that in pursuance of said agreements the Wabash, St. Louis & Pacific Railway Company took possession of the railroad and other property of the Missouri, Iowa & Nebraska Railway Company and operated the same as part of its line, and the receivers of the Wabash, St. Louis & Pacific Railway Company are now in possession of and operating the same, and that the Wabash, St. Louis & Pacific Railway Company paid the coupon interest on its bonds above mentioned up to and including the coupons which fell due on March 1st, 1884, but has paid no in-
241 terest since that day, and petition*ing* this court to make such orders as may be necessary and proper to enable the petitioner to execute the said decree of the United States circuit court of Iowa without further delay, so that the property affected thereby may be delivered over to the purchaser or purchasers at any such sale free and clear of any claim of the receivers of the Wabash, St. Louis & Pacific Railway Company, and for such other and further order in the premises as may be just.

And the defendant- The Wabash, St. Louis and Pacific Railway Company and The St. Louis, Iron Mountain and Southern Railway Company having each separately filed their respective demurrers to said petition, and the receivers having filed their answers to said petition—

And the matter having, by order of this court dated February 3d, 1885, been referred to the special master herein appointed to to take proof thereof and to report the same to the court—

And the said special master having made and filed his report herein June 9th, 1885, wherein and whereby he has reported that the intervenor, said Wabash, St. Louis and Pacific Railway Company, and said receivers having agreed upon a settlement of the matters in controversy as set forth in said petition, and that the Wabash, St. Louis and Pacific Railway Company and the St. Louis, Iron Mountain and Southern Railway Company have withdrawn their separate demurrers, and the receivers have withdrawn their answer to said petition, and that said Wabash, St. Louis and Pacific Railway Company and said intervenor and said receivers consented to the making of this order as a matter of arrangement and compromise between said parties for the sake of avoiding unnecessary litigation, and *has* recommended the court to sign and enter this order—

And the court being fully advised in the premises, and due consideration having been had—

It is ordered, adjudged, and decreed that Thomas Thacher, of the city of New York, be, and he is hereby, appointed receiver of
242 all and singular the property and franchises of the Missouri,

Iowa and Nebraska Railway Company, including the line of railroad of said company extending from Keokuk, in the State of Iowa, to Van Wert, in the said State, together with all and singular the appurtenances in anywise thereto appertaining and of all records, books, papers, and accounts of the said company in anywise appertaining to the business thereof and necessary to enable him properly and efficiently to perform the duties imposed upon him by this order; that his said appointment take effect on his giving a bond for the faithful performance of his duties as receiver in the premises in the sum of twenty-five thousand dollars, with two sureties, to be approved as to form and sufficiency by a judge of this court; the said receiver on the filing of such bond forthwith to enter upon the performance of his duties as such; that the said receiver shall continue the operation of the said railroad in the ordinary and usual course as the same is now operated in the common carriage of freight and passengers, having due regard to the public interest and accom-idation of the public, keeping the premises and property, both real and personal, in good condition and repair, and that he have the full authority from time to time to employ and discharge all needful laborers, servants, and agents and purchase and pay for all such needful material and supplies as may seem to him necessary and proper in the exercise of a sound discertion, with leave to apply to the court from time to time, as he may be advised, for direction in the premises, settling and adjusting, according to the usage and usual course of business, all outstanding traffic balances with other railroads and like balances from time to time as they may arise, and that he have full power generally to do and perform all the things necessary and proper, according to the rules and usages of good railroad management, to increase the business of the said road and promote the convenience of the public, with power to prosecute and defend, without further order of this court, any actions by or against him as such receiver, and to pay and defray all the usual
243 and ordinary expense incident thereto, with full power to commence and prosecute any actions which in the usual course of business he may deem it proper and necessary to commence hereafter, either in the name of the said railroad company or in his own name as such receiver as he may be advised; and he shall have full power to defend any and all suits that may be hereafter brought against the said company or against himself as such receiver by the permission of this court, and to defray the necessary and proper expense of the prosecution and defenses; and he shall do whatever may be needful to maintain and preserve the corporate organization and franchises of the said company and defray the necessary and proper expenses incident thereto; and in all and singular the premises he shall be subject to such orders and directions as this court may make from time to time, and he is authorized to apply from time to time for such other orders and directions as he may be advised. The said receiver shall have full power to pay and discharge all debts due for laborers, servants, agents, and employés of all kinds for services rendered in and about the operation of the said line of the Missouri, Iowa & Nebraska Railway Com-

pany in and about the conduct and management of its lawful business by the receiver hereby appointed.

It is further ordered, adjudged, and decreed that the defendant The Wabash, St. Louis and Pacific Railway Company and Solon Humphreys and Thomas E. Tutt, receivers of said last-named railway company, deliver up and render to the receiver herein appointed, on or before the first day of July, A. D. 1885, provided he shall have become qualified according to the terms of this order to enter upon his duties as such receiver, all and singular the premises and property whereof he is hereby appointed as such receiver.

It is further ordered, adjudged, and decreed that the prayer of the petitioner herein be granted in this, to wit, that the petitioner have leave to enforce the decree of the United States circuit
214 court for the district of Iowa made on or about the twenty-second day of October, 1880, in the suit therein pending, in which The Farmers' Loan and Trust Company was complainant and The Missouri, Iowa and Nebraska Railway Company was defendant, and to execute the said decree and sell the property and premises therein referred to under and in pursuance of the provisions thereof; provided, however, that no part of the said premises affected by the said decree be sold until after the first day of June, in the year one thousand eight hundred and eighty-six.

But neither this order nor anything done in pursuance thereof or under said decree of the United States circuit court for the district of Iowa, October 22d, 1880, shall in any manner affect or impair the jurisdiction or power of this court to determine any and all questions as to what portion, if any, of any existing indebtedness of the Wabash, St. Louis & Pacific Railway Company or of Solon Humphreys and Thomas E. Tutt, as receivers of the property of said last-named company, should be charged upon or enforced as a lien prior to any mortgage against said Missouri, Iowa & Nebraska railroad or as a first lien upon or against the income and revenue thereof; and the said Missouri, Iowa & Nebraska Railway Company and the receiver herein and hereby appointed and the successor or successors of them or either of them, as well as each and every person coming into or having possession of said Missouri, Iowa & Nebraska railroad or any part thereof, as the same is in this order described, shall enter their appearance in this action whenever ordered or required by this court so to do, not generally but specially, for the purpose of adjusting the accounts between said property and the Wabash, St. Louis & Pacific Railway Company or its receivers or of apportioning the indebtedness aforesaid among the different divisions or lines of railroad formerly owned or operated by the Wabash, St. Louis & Pacific Railway Company; and said parties and each of them shall abide and perform whatever
245 orders, judgments, or decrees may be made by this court in said cause touching the matters aforesaid, but any party considering himself aggrieved by any final order, judgment, or decree touching the adjustment of said accounts or the charging or apportioning of said indebtedness may appeal therefrom as in ordinary cases.

It is further ordered that the said Farmers' Loan and Trust Company or the several owners or holders of the bonds secured by the mortgage of said Missouri, Iowa and Nebraska Railway Company to said Farmers' Loan & Trust Company of New York before any sale of said property under said decree of October 22d, 1880, shall, unless the Wabash, St. Louis & Pacific Railway Company shall otherwise agree and this court shall otherwise direct, cause all the bonds of said Wabash, St. Louis & Pacific Railway Company issued and dated on or about the first day of March, 1881, and secured by a certain mortgage or deed of trust executed by the said Missouri, Iowa & Nebraska Railway Company on or about the date last aforesaid to the Mercantile Trust Company of New York to be brought into this court for cancellation or for surrender to the said Wabash, St. Louis & Pacific Railway Company or to the receivers thereof, and this order shall be without prejudice to the rights of the Mercantile Trust Company of New York as trustee in the mortgage executed by the Missouri, Iowa & Nebraska Railway Company to it on or about the first day of March, 1881, to secure the aforesaid bonds of the Wabash, St. Louis & Pacific Railway Company.

It is further ordered that nothing herein contained or that may be done hereunder shall effect or in anywise impair any right or claim of the Wabash, St. Louis & Pacific Railway Company or of the receivers thereof to any property that may pass into the possession or under the control of the receiver by this order appointed and which property was not embraced or included in a certain mortgage executed on or about June 1, 1870, by said Missouri, Iowa & Nebraska Railway Company to said Farmers' Loan and
246 Trust Company of New York, and under which mortgage the aforesaid decree of foreclosure and sale was entered in the circuit — of the United States for the district of Iowa on or about the 22d day of October, 1880.

After the receiver hereby appointed shall have been placed in possession of all the property and premises of which he is hereby appointed receiver the Wabash, St. Louis & Pacific Railway Company and its receivers shall be and remain reli-ved and discharged of any responsibility and liability for any deficiency which may accrue in the operating of the Missouri, Iowa & Nebraska railway by the receiver hereby appointed and from any and all obligations resting on said Wabash, St. Louis & Pacific Railway Company by reason of any of the agreements set forth or alluded to in the petition herein, as hereinbefore recited.

And it is further ordered, adjudged, and decreed that the receiver hereby appointed, out of the first moneys that shall come into his hands as such receiver, pay the costs of the petition herein, to be taxed, and also to the petitioner, The Farmers' Loan and Trust Company, as trustee under the mortgages made to it by the Missouri, Iowa & Nebraska Railway Company, the sum of twenty-one hundred dollars on account of the expenses incurred by the execution of its trust.

It is further ordered, however, that the decree herein entered is subject to any proceedings which may be had under the decree of

foreclosure of October 22nd, 1880, heretofore entered in the United States circuit court for the district of Iowa.

247 (*Copy of Record of U. S. Circuit Court, E. Div. of E. District of Mo., in the Case of Charles A. Secor et al. vs. James K. Singleton et al.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be *it* remembered that on the sixth day of August, A. D. 1879, there was filed in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri a certain bill of complaint in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR, JAMES F. SECOR, JOHN E. Walker, George S. Knox, and Charles H. Mellen
vs.
JAMES K. SINGLETON, BENNETT KRATZER, S. B. Lind, Justices of the County Court of Schuyler County, Missouri; Frank A. Irvin, Collector of State and County Revenue of said County; Benjamin F. Bourn, Riley Gale, & E. E. Sparks, Justices of the County Court of Scotland County, Missouri, and Henry M. Gorin, Collector of State and County Revenue of said County of Scotland; Willis M. Boulware, Marcelus L. Chappell, and John Stafford, Justices of the County Court of Clark County, Mo., and George S. Stafford, Collector of said Clark County, and The Missouri, Iowa & Nebraska Railway Company. } Bill in Equity.

To the honorable judges of the United States circuit court for the eastern district of Missouri:

Your orators Charles A. Secor and James F. Secor are citizens of the State of New York and reside in the city of New York;
248 John E. Walker and George S. Knox are citizens of the State of Illinois and residents of Hancock county, in said State; Charles E. Mellen is a citizen of the State of Iowa and a resident of Lee county, in said State.

And your said orators bring this their bill in equity against James K. Singleton, Bennett Kratzer, and S. B. Lind, who are justices of the county court of Schuyler county, Missouri, and Frank A. Irvin, who is the collector of State and county taxes of said Schuyler county, and Benjamin F. Bourn, Riley Gale, and E. E. Sparks, who are jus-

tices of the county court of Scotland county, Missouri, and Henry M. Gorin, who is collector of said Scotland county; Willis M. Boulware, Marcelus L. Chappell, and John Stafford, who are justices of Clark county, in the State of Missouri, and George S. Stafford, who is collector of said Clark county, and say that each and every of the said above-named defendants are citizens *are citizens* of the State of Missouri and residents in the eastern district of said State, and the Missouri, Iowa and Nebraska Railway Company, a corporation of the State of Missouri, owning and operating a line of railroad through the counties of Scotland, Schuyler, and Clark, in the State of Missouri, being a citizen of the State of Missouri and located in the eastern district of said State.

And thereupon your orators complain and say—

1st. That by an act of the General Assembly of the State of Missouri approved February 9th, 1857, entitled an "Act to incorporate the Alexandria and Bloomfield Railroad Company," the said Alexandria and Bloomfield Railroad Company became and was duly and regularly incorporated under the laws of the State of Missouri and authorized to organize and to do and perform all the acts and things necessary to be done and performed in carrying out the objects of said charter, which objects were to construct and maintain and operate a line of railroad from Alexandria, in Clark county, Missouri,

to a point on the northern bound-ry line of the State of Mis-
249 souri in the direction of the town of Bloomfield, in the State of Iowa.

2. That thereafter, on the 13th day of September, A. D. 1864, the said Alexandria & Bloomfield railroad was organized and commenced operations.

3. That by an act of the General Assembly of the State of Missouri approved Feb'y 19th, 1866, entitled "An act to amend an act entitled An act to incorporate the Alexandria & Bloomfield Railroad Company, approved Feb'y 9th, 1857," the said Alexandria and Bloomfield Railroad Company was authorized to change its incorporate name to that of the Alexandria and Nebraska City railroad, and that thereafter, in pursuance to the authority granted by said act, the name of said corporation was so changed and was thereafter and until the time hereinafter designated continued to be known as and was the Alexandria & Nebraska City railroad.

4. That under and by authority of the general laws of the States of Missouri and Iowa the said Alexandria & Nebraska City railroad, of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, were on the 3rd day of May, 1870, duly and legally consolidated, and that thereafter the said Alexandria & Nebraska City railroad and the said Iowa Southern Railway Company became and were merged and consolidated into one company and corporation under the corporate name of the Missouri, Iowa & Nebraska Railway Company, and that under and by virtue of the general laws of the State of Missouri and Iowa providing for consolidation of railroads connecting at the line of said States the said consolidated corporation, the Missouri, Iowa & Nebraska Railway Company, became and was and is vested, possessed, and invested with all the rights,

privileges, and immunities and subject to the duties and obligations imposed upon the said constituent companies in the said States of Missouri and Iowa respectively.

5. That by the provisions of the 9th section of the charter of the said Alexandria & Bloomfield Railroad Company, afterward the Alexandria & Nebraska City railroad and now the Missouri, Iowa & Nebraska Railway Company, it is provided that "the stock of
250 said company shall be exempt from taxation for the period of twenty years after its completion," and that said railroad was completed to the northern boundary line of the said State of Missouri on the — day of ——, 187–, and that twenty years has not yet elapsed since the completion thereof.

6. Your orators, further complaining, say that the said Missouri, Iowa & Nebraska Company's railroad *id* now located and constructed and being operated in and through the counties of Clark, Scotland, and Schuyler, in said State of Missouri, to the northern boundary line of the State of Missouri, in said Schuyler county, a distance of about seventy miles, and that the said corporation, the Missouri, Iowa & Nebraska Railway Company, does not own or possess any property in the State of Missouri, real or personal, other than that which is necessary for the use and operation of said railroad and actually used for said purpose, and that the entire valuation of all the property of said corporation, real and personal, owned and used by it in the State of Missouri does not exceed in value the sum of one million dollars, and that not more than that amount of stock has been issued upon said line of railroad in the State of Missouri.

7. Your orators, further complaining, say that they are, each of them, *bona fide* stockholders in said Missouri, Iowa & Nebraska Railway Company, and that the amount of stock by them respectively owned and held in said company is as follows—that is to say:

Charles A. Secor owns one hundred shares of said stock, being ten thousand dollars.

James F. Secor owns one hundred shares of said stock, being ten thousand dollars.

George S. Knox, John E. Walker, and Charles H. Mellen owns each forty shares of said stock, being four thousand dollars each; that they purchased said stock and paid full value therefor, relying upon the provisions of said charter, whereby the same was exempted from taxation in said State of Missouri.

251 8. Your orators, further complaining, show that the said stock and the property of the said railroad company in the said State of Missouri representing said stock is now and for a period of twenty years from the date of said completion of said railroad in the State of Missouri is to continue exempt from taxation, and that the same has been so decided and held by the circuit and supreme courts of the State of Missouri in the case of The County of Scotland against The Missouri, Iowa and Nebraska Railway Company, the decision whereof is reported in the 65th vol. of the Missouri Supreme Court Reports, at page- 123–138.

9. The defendants James K. Singleton, Bennett Kratzer, and S.

B. Lind are the justices of the county court of Schuyler county, Missouri, and Frank A. Irvin, def't, is the collector of said Schuyler county.

The defendants Benjamin F. Bourn, Riley Gale, and E. E. Sparks are the justices of the county court of Scotland county, Missouri, and Henry M. Gorin is the collector of said Scotland county.

Defendants Willis M. Boulware, Marcelus L. Chappell, and John Stafford are the justices of the county court of Clark county, Missouri, and George S. Stafford is the collector of said county of Clark.

That by the laws of the State of Missouri it is the duty of the said several justices of the said several county courts sitting and acting as a county court in their said several and respective counties to cause to be levied and collected the various taxes required to be levied by law in their said several and respective counties, and that their duties in respect thereto are ministerial and not judicial.

That it is the duty of the said several county collectors within their said several and respective counties to collect the various taxes authorized by law to be assessed and which under the provisions of law have been assessed within their said several and respective counties, and as a means thereto to levy upon personal property of tax-payers delinquent in the payment of taxes and to
252 institute and maintain in their official name to the use of the State and county suits to enforce the collection of delinquent taxes against delinquent railroad corporations within their several and respective counties.

But your orator says that for the reasons heretofore set out and declared in this bill the said county courts of Schuyler, Scotland, and Clark counties have no right, power, or authority to assess taxes against the said Missouri, Iowa and Nebraska Railway Company, its property or stock, for any purpose whatever.

But now so it is, may — please your honors, that, as your orators are informed and believe, and so state the facts to be, the above-named defendants, combining and conspiring together with others to your orators unknown, but whose names your orators ask they may have leave to insert in this petition when ascertained, with apt words to charge them as defendants herein, are *going* about to cause the said Missouri, Iowa and Nebraska Railway Company to pay taxes in the said State of Missouri and in the said counties of Clark, Scotland, and Schuyler, in said State, notwithstanding the said exemption in said charter from taxation and the decisions therein rendered by the said courts of the State of Missouri.

That they and their associates have caused the property of the said railway company owned and used exclusively for the purpose of operating said railroad and necessary for its operation in the said counties to be assessed for taxation, and that the same has been so assessed and certified by the State board of equalization of the State of Missouri to the said counties for taxation for State, county, school, and municipal purposes, contrary to the provisions of said charter.

That the said county court justices, in their respective counties as county courts, have ordered suit to be brought for delinquent

taxes on the property of said railroad heretofore assessed in said State and counties, and have contracted and intend to con-
253 tract with attorneys-at-law to institute and maintain suits for such delinquent taxes and for such as may hereafter become delinquent, and in every way to proceed and to enforce collection of taxes against the property of said railroad company as the said defendants would be entitled by the laws of Missouri in such cases were it not for the exemption in the charter of said railway company, as heretofore stated.

That it is the object, design, and intention of the defendants Irvin, Gorin, and Stafford, each in *their* respective counties, to proceed to collect said taxes and to institute, bring, and maintain suits for that purpose and to harass and oppress, injure and defraud, said corporation out of the amount of said taxes, amounting in the aggregate to not less than from fifteen to twenty thousand dollars annually.

And your orators further represent that the said defendant The Missouri, Iowa & Nebraska Railway Company refuses to adopt any measures to prevent the collection of said taxes, and that your orators are left wholly without any remedy at law.

In consideration whereof and forasmuch as your orators can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable—

To the end, therefor-, that the said several defendants may, if they can, show why your orators should not have the relief prayed and may upon their several and respective corporal oath and according to the utmost of their several and respective knowledge, remembrance, information, and belief full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder writ-en they are respectively required to answer—that is to say:

1. Whether the Alexandria & Bloomfield railroad was organized under its charter on the 13th day of September, A. D. 1864.

2. Whether, in pursuance to power granted in act of Feb'y 19th, 1866, the name of the Alexandria and Bloomfield R. R. was changed to that of the Alexandria & Nebraska railroad.

254 3. Whether on the third day of May, 1870, the Alexandria and Nebraska City railroad was consolidated with the Iowa Southern Railway Company and thereupon took the name of the Missouri, Iowa & Nebraska Railway Company.

4. Whether it is less than twenty years since the completion of the M., I. & N. R'y in the State of Missouri.

5. Whether the said M., I. & N. R'y Co. owns any property, real or personal, in the State of Missouri and in the counties of Clark, Scotland, & Schuyler, in said State, other than what is necessary to be used in the operations of said railroad and other than is actually used for said purpose.

6. Whether the value of all the property owned and held and used by the M., I. & N. R'y in the said counties of Clark, Scotland,

& Schuyler, in the State of Missouri, exceeds the sum of one million dollars.

7. Whether more than one million dollars of stock has been issued on said line of railroad in the State of Missouri.

8. Whether the plaintiffs are stockholders in said Missouri, Iowa & Nebraska R'y Co. and own each the amount of stock aver-ed in the bill to be owned by them respectively.

9. Whether the property of the M., I. & N. R'y in Missouri has not been decided by the supreme court of the State of Missouri to be exempt from taxation for a period of twenty years from the date of completion of said railroad in Missouri.

10. Whether the defendant Frank A. Irvin is not collector of State and county revenue in the county of Schuyler aforesaid, and whether he has not been ordered to collect taxes from the M., I. & N. R'y Co. in said county and is intending to do so unless restrained.

11. Whether H. M. Gorin is not collector of State and county revenue for the county of Scotland aforesaid, and whether he has not been ordered to collect taxes from said M., I. & N. R'y Co. in said county and is intending to do so unless restrained.

255 12. Whether George S. Stafford is not collector of State and county revenue for the county of Clark, in said State, and whether he has not been ordered to collect taxes from said M., I. & N. R'y Co. in Clark county and is intending so to do unless restrained.

13. What amount of taxes for all purposes *are* claimed to be due from said M., I. & N. R'y Co. in Schuyler county.

14. What amount of taxes for all purposes is claimed to be due from said M., I. & N. R'y Co. in Scotland county.

15. What amount of taxes for all purposes is claimed to be due from said M., I. & N. R'y Co. in Clark county.

16. James K. Singleton, Bennett Kratzer, and S. B. Lind will answer whether they are not justices of the county court of Schuyler county, Missouri, and if they, as the county court of said county, are not causing to be assessed and collected State, county, school, and municipal taxes upon all the property of the Missouri, Iowa and Nebraska Railway Company in said county for the year 1879 and for several years prior thereto, and whether they are not intending to cause suits to be instituted for the collection of alleged delinquent taxes upon said railway property or otherwise enforce collection of the same.

17. Benjamin F. Bourn, Riley Gale, and E. E. Sparks will answer whether they are not justices of the county court of Scotland county, Missouri, and if they, as the county court of said county, are not causing to be assessed and collected State, county, school, and municipal taxes upon all of the property of the Missouri, Iowa and Nebraska Railway Company in said county for the year 1879 and for several years prior thereto, and whether they are not intending to cause suits to be instituted for collection of alleged delinquent taxes upon said railway property or otherwise enforce collection of the same.

18. Willis M. Boulware, Marcelus L. Chappell, and John Stafford will answer whether they are not justices of the county
256 court of Clark county, Missouri, and if they, as the county court of said county, are not causing to be assessed and collected State, county, school, and municipal taxes upon all the property of the Missouri, Iowa and Nebraska Railway Company in said county for the year 1879 and for several years prior thereto, and whether they are not intending *the* cause suits to be brought for the collection of alleged delinquent taxes upon said railway property or otherwise enforce collection of the same.

19. The Missouri, Iowa and Nebraska Railway Company will answer whether it has not refused and neglected to adopt any measures to prevent the assessment and collection of taxes upon its property necessary to its use and operation as a railroad and being in Schuyler, Scotland, and Clark counties.

Prayer.

And may it please your honors to grant unto your orators the writ of injunction issuing out of and under the seal of this honorable court or issued by one of your honors, according to the form of the statute in such cases made and provided, directed to each of the defendants herein named, and commanding, enjoining, and restraining them as follows—that is to say, the defendants Frank A. Irvin, as collector of Schuyler county, Missouri; H. M. Gorin, as collector of Scotland county, Missouri; George S. Statford, as collector of Clark county, Missouri, each and every of them, and their successors in office to desist from further attempting to collect or receive from the said defendant The Missouri, Iowa & Nebraska Railway Company any money or other thing in payment of taxes from said railroad company for State, county, school, municipal, or any other purposes and to desist and refrain from any attempts so to collect said taxes by suit, levy, distraint, or sale of property or otherwise.

And that the said defendant The Missouri, Iowa and Nebraska Railway Company be commanded and enjoined and re-
257 strained from paying any taxes of any kind or nature whatsoever levied upon any of the property of said defendant in the said counties of Clark, Scotland, and Schuyler or either of them.

That defendants Singleton, Kratzer, and Lind be enjoined and restrained, as the county court of Schuyler county, from levying and causing to be collected, or either, any taxes whatever, whether State, county, school, or municipal or otherwise, upon the property of defendant Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied from being collected by levy, distraint, sale of property, institution of suits or otherwise, and that they do no act concerning the premises whatever.

That the defendants Bourn, Gale, and E. E. Sparks, as such justices and county court of Scotland county, be enjoined and restrained

from levying and causing to be collected upon either or both any taxes whatever, whether State, county, school, or municipal, upon the property of defendant Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied from being collected by levy, distraint, sale of property, institution of suits or otherwise, and that they do no act concerning the premises whatever.

That defendants Boulware, Chappell, and Stafford, as such justices and county court of Clark county, be enjoined and restrained from levying and causing to be collected, or either, any taxes whatever, whether State, county, school, municipal or otherwise, upon the property of defendant Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied from being collected by levy, distraint, sale of property, institution of suits or otherwise, and that they do no act concerning the premises whatever.

That upon exhibition of this bill your orators may have a provisional or temporary writ of injunction to be made final and forever binding upon final hearing, and that your orators may
258 have such further and other relief as the nature of the case may require and to this honorable court may seem meet.

And may it please your honors to grant to your orators a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to said James K. Singleton, Bennett Kratzer, S. B. Lind, Frank A. Irvin, Benjamin F. Bourn, Riley Gale, E. E. Sparks, Henry M. Gorin, Willis M. Boulware, Marcelus L. Chappell, John Stafford, and George S. Stafford and The Missouri, Iowa and Nebraska Railway Company, defendants, commanding them and each of them, on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against them, and your orators, as in duty bound, will ever pray.

A. J. BAKER,
Solicitor for Complainant.

A. J. BAKER AND
F. T. HUGHES,
Of Counsel for Compl'ts.

UNITED STATES OF AMERICA, }
District of Iowa. }

John E. Walker, being duly sworn, deposeth and saith:

That he is one of the complainants in the foregoing bill named, and he has read the same and knows the contents thereof.

That the said bill is true of his own knowledge, except those matters therein stated to be on his information and belief, and those he believes to be true.

JOHN E. WALKER.

Sworn before me this 23rd day of July, 1879.

[SEAL.] T. P. SHONTS,
Notary Public.

259 (*Note.*)

The defendants Frank A. Irvin, H. M. Gorin, and George S. Stafford are each required to answer interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9; Frank A. Irvin is required in addition to answer *to answer* interrogatories numbered 10 & 13; H. M. Gorin is required in addition to answer interrogatories numbered 11 and 14; George S. Stafford is required in addition to answer interrogatories 12 & 15.

The defendants James K. Singleton, Bennett Kratzer, and S. B. Lind, in addition to interrogatories number- 1, 2, 3, 4, 5, 6, 7, 8, & 9, are required to answer interrogatory 16.

And defendants Bourn, Gale, and Sparks, in addition to numbers 1 to 9, inclusive, are required to answer interrogatory 17.

And defendants Boulware, Chappell, and Stafford, in addition to numbers 1 to 9, inclusive, are required to answer interrogatory 18.

And defendant Missouri, Iowa and Nebraska Railway Company, in addition to numbers 1 to 9, inclusive, are required to answer interrogatory number 19.

A. J. BAKER AND
F. T. HUGHES,
Solicitors and of Counsel for Complainants.

And afterwards, to wit, on the eighteenth day of November, A. D. 1879, there was filed in said cause an answer in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Pl'ffs,
vs.
JAMES K. SINGLETON *et al.*, Def'ts. } Bill in Equity.

260 These respondents Benjamin F. Bourn, Riley Gale, and E. E. Sparks, judges of the county court of the county of Scotland, and Henry M. Gorin, collector of the State and county revenue for the said county of Scotland, come and for their joint and separate answer to the bill of complaint filed in this cause answer and say:

These respondents deny each and every allegation in said bill of complaint except as hereinafter admitted.

1. These respondents, further answering, say that they admit that by an act of the General Assembly of the State of Missouri, approved Feb. 9th, 1857, entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," that James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, Dekalb Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and Reynolds Bane, of the county

of Clark, and all such persons as may thereafter become stockholders in the said company, were incorporated under the laws and authorized to organize as an incorporated company; but these respondents are informed and believe that said James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, Dekalb Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and Reynolds Bayne never did organize a corporation known as "The Alexandria and Bloomfield Rail-Company" under said act of the General Assembly aforesaid, and therefore deny that any organization was made of such company, and require strict proof of all allegations in relation thereto.

2. These respondents are informed and believe and so charge that the parties named in section 1 of the aforesaid act did not on *the* September 13, A. D. 1864, or at any time organize the said Alexandria and Bloomfield Railroad Company and commence operations, and therefore deny the same, and require strict proof thereof.

3. These respondents admit that the printed acts of the General Assembly of the State of Missouri for a session of said General Assembly beg*a*n and held on the 1st day of November, 1865, contain an act approved 19th day of February, 1866, entitled "An act to amend an act entitled 'An act to incorporate the Alexandria
261 & Bloomfield Railroad Company,'" approved Feb. 9th, 1857, with additional title, by which the Alexandria and Bloomfield Railroad Company was authorized to change its corporate name to that of the Alexandria and Nebraska City railroad; but these respondents are advised and believe that the said act approved 19th Feb., 1866, never was passed by the two houses of the General Assembly in the manner required and provided by the constitution of the State of Missouri, which took effect upon the 4th of July, 1865, and for that reason said act is void and of no force and effect, and require proof of the same.

These defendants, further answering, say that as to whether, in pursuance of supposed authority conferred by the act of the 19th Feb., 1866, aforesaid, the name of the Alexandria and Bloomfield Railroad Company was thereafter changed, designated, and known as the Alexandria & Nebraska City railroad, these respondents have no sufficient knowledge or information sufficient to form a belief, and require strict proof of the same.

That whether or not, under and by authority of the general laws of the States of Missouri and Iowa, the said Alexandria & Nebraska City railroad, of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, were, on the 3d day of May, 1870, duly and legally consolidated, or that thereafter the said Alexandria and Nebraska City railroad and the said Iowa Southern Railway Company became and were merged and consolidated into one company and corporation under the corporate name of the Missouri, Iowa and Nebraska Railway Company, or that, under and by virtue of the laws of the States of Missouri and Iowa providing for consolidation of railroads connecting at the line of said States, the said consolidated corporation became and was the Missouri, Iowa & Nebraska Railway Company or became and was vested, possessed, and

invested with all the rights, privileges, and immunities and subject to the duties and obligations imposed upon the said constituent companies in the said States of Missouri and Iowa, respectively,

262 these respondents have no sufficient knowledge or information to form a belief as to the truth thereof — allegations, and require strict proof of the same.

But state that if such consolidation was had and said companies became and were merged into one, the Missouri, Iowa and Nebraska Railway Company so formed became and is a new company existing under and by virtue of the general laws of the State only and is not entitled to the immunity of exemption from taxation by virtue of the charter of the Alexandria and Bloomfield Railroad Company, but by such consolidation such new company became and is subject to all the laws in force at the time of such consolidation and is subject to taxation.

5. These respondents admit that by the provisions of the 9th section of the charter authorizing the organization of the Alexandria and Bloomfield Railroad Company it is provided that "the stock of said company shall be exempt from taxation for the period of twenty years after its completion," but *as* the parties authorized to organize said company, as these respondents are informed and believe, never did organize said Alexandria and Bloomfield Railroad Company, but that the said so-called Alexandria and Bloomfield Railroad Company, if organized at all, was done by persons without authority of law, and they cannot claim the benefit of said exemption in section 9 of the charter aforesaid; and these respondents further admit that twenty years has not yet elapsed since the completion of the railroad now called the Missouri, Iowa & Nebraska Railway Company, which these respondents claim is not entitled to any exemption from taxation in the State of Missouri.

6. These respondents admit that said so-called Missouri, Iowa and Nebraska Railway Company's railroad is now completed and operated on and through the counties of Clark, Scotland, ans Schuyler, in said State of Missouri, to the northern boundary line of the State of Missouri, in said Schuyler county, a distance of about seventy miles, and that whether or not the said corporation known and called the Missouri, Iowa and Nebraska Railway Company does not own or possess any property in the State of Missouri, real or

263 personal, other than that which is necessary for the use and operation of said railroad or actually used for said purpose, these respondents have not sufficient knowledge or information to form a belief and require proof thereof; and as — whether or not the entire valuation of all the property of said corporation, real and personal, owned and used by it in the State of Missouri exceeds the value of one million dollars, these respondents have no sufficient knowledge or information to form a belief and require strict proof.

7. That whether or not the complainants are each of them *bona fide* stockholders in said Missouri, Iowa & Nebraska Railway Company, and that amounts of stock by them respectively owned and held is as alleged in said bill of complaint, these respondents have

no sufficient knowledge or information to form a belief and require strict proof thereof.

8. That as to whether or not these several complainants purchased said stock and paid full value therefor, relying upon the provisions of said charter whereby the same was exempted from taxation in said State of Missouri, these respondents have no sufficient knowledge or information to form a belief; but, if these respondents — correctly informed, these complainants might have ascertained, by a full examination of the laws of the State of Missouri, and especially of the charter authorizing the organization of the Alexandria and Bloomfield Railroad Company, that it never was organized by those who were authorized so to do by the law.

8. These respondents admit that the circuit court of Scotland county and the supreme court of the State of Missouri, in a case wherein The County of Scotland was plaintiff and the so-called Missouri, Iowa and Nebraska Railroad Company was defendant and which is reported in vol. 65 of the Mo. Reports, passing only upon an agreed statement of made in that case, did decide that the stock of said railroad company was exempt from taxation for a period of twenty years, but these respondents are advised by their
264 counsel that improper admissions were made in said agreed statement for and on behalf of the county of Scotland; that points made in this answer were not made or set forth in said agreed statement of facts, and that points are made and defences set up in this answer which were not made or set up by Scotland county in the agreed statement of facts passed upon by the circuit court of Scotland county and the supreme court of the State.

9. These respondents admit that Benjamin Bourn, Riley Gale, and E. E. Sparks are judges (not justices) of the county court of Scotland county, and that Henry M. Gorin is the collector of the State and county revenue for said county of Scotland, and also admit that by the laws of the State of Missouri it is the duty of the several judges of the said several county courts, sitting and acting as a county court in their several and respective counties, to cause to be levied and collected the various taxes required to be levied by law in their respective counties, and that their duties in respect thereto are created by general laws of the State of Missouri of which judicial notice is taken by this court.

These respondents further admit that it is the duty of the said several and respective county collectors, within their said several and respective counties, to collect the various taxes authorized by law to be assessed and which under the provisions of law have been assessed within the said several and respective counties, and as a means thereto to levy upon personal property of tax-payers delinquent in the payment of taxes and to institute suits in their official name to the use of the State and county to enforce the collection of delinquent taxes against railroad corporations within their several counties.

These respondents do not admit but deny the allegation set out in the bill of complaint that they have no authority, right, or power to assess taxes against the said so-called Missouri, Iowa and Nebraska

Railway Company, its property or stock, for any purpose
265 whatever, and they claim that the county court of Scotland county is by the law of the State authorized to levy and caused to be collected taxes of and from the said so-called Missouri, Iowa and Nebraska Railway Company.

These respondents deny any combination or conspiracy with or without others to complainants unknown to cause the said so-called Missouri, Iowa and Nebraska Railway Company to pay any illegal taxes, but, further answering, these respondents say, after taking the advice of their official legal counsel, they have done what they could to cause the property owned by the aforesaid railway company in the county of Scotland to be assessed for taxation, and that the same has been assessed and certified to the State board of equalization of the State of Missouri to the said counties for taxation for all purposes not contrary to but in accordance with the laws of the State.

These respondents further admit that they expect to use all lawful ways and means to collect the taxes assessed against the property of the so-called Missouri, Iowa and Nebraska Railway Company, and that respondent Gorin, collector in the county of Scotland, intends, if not restrained by law and higher authority than the county court of Setland, to proceed by suit and otherwise to collect all the taxes assessed against said last-named railway company, not for the purpose of harassing, oppressing, injuring, or defrauding said corporation, but for the purpose of collecting the taxes said respondent is advised has been lawfully assessed against the property of said railway company.

These respondents have no knowledge or information sufficient to form a belief as to what course the so-called Missouri, Iowa and Nebraska Railway Company intend to pursue in relation to the taxes assessed against the property of said company, but these respondents are strongly inclined to the opinion that said company will pursue whatever course these complainants may desire in the premises.

266 These respondents, in further answering the complainant's bill of complaint, proceed to answer the several interrogatories propounded to them as follows:

In answer to the 1st interrogatory, these respondents say they are informed and believe, and so charge the fact to be, that the parties named in the first section of the act entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," to wit, James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, Dekalb Musgrave, Robert McKee, Thomas E. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and Reynolds Bane, never did organize said company on the 13th day of September, 1864, or at any other time; and, further, they are informed and believe that if any company by the name of the Alexandria and Bloomfield Railroad Company was ever organized it was not organized in conformity to said charter, and neither said company nor those who have succeeded to its rights are entitled to exemption from taxation under the laws of Missouri.

These respondents, for answer to the 2nd interrogatory, say as to whether in pursuance to power granted in the act of February 19, 1866, the name of the Alexandria and Bloomfield R. R. was changed to that of the Alexandria and Nebraska City railroad, these respondents have no sufficient knowledge or information to form a belief, and ask strict proof thereof.

In answer to the third interrogatory, these respondents have no sufficient knowledge or information to form a belief as to whether or not, on the third day of May, 1870, the Alexandria and Nebraska City railroad was consolidated with the Iowa Southern Railway Company or thereupon took the name of the Missouri, Iowa and Nebraska Railway Company.

But state the fact to be that if such consolidation was had, the Missouri, Iowa and Nebraska Railway Company, so formed, became and is a new company, existing under and by virtue of the general laws of the State only, and is not entitled to the immunity of exemption from taxation by virtue of the charter of the Alex-
267 andria and Bloomfield Railroad Company.

In answer to the 4th interrogatory, these respondents say it is less than twenty years since the completion of the so-called M., I. and N. R'y in the State of Mo.

In answer to the 5th interrogatory, these respondents have no knowledge or information sufficient to form a belief as to what personal and real property is owned in the counties of Clark, Scotland, and Schuyler by the M., I. & N. R'y Co. or whether the said company has or has not any property other than what is necessary to be used in the operation of said railroad.

In answer to the 6th interrogatory, these respondents say they have no sufficient knowledge or information to form a belief as to whether the value of the property of said M., I. & N. R'y Co. is more or less than one million of dollars.

In answer to the 7th interrogatory, they have no knowledge or information *that* as to whether more than one million of dollars of stock has been issued on said line of railroad in the State of Missouri, and demand strict proof thereof.

In answer to the 8th interrogatory, these respondents say they have no knowledge or information sufficient to form a belief as to the amount of stock held by either of complainants in the so-called Missouri, Iowa and Nebraska Railway Co., and require strict proof thereof.

In answer to the 9th interrogatory, these respondents admit that there was a decision of the supreme court of the State of Missouri based upon an agreed statement of facts, wherein it was decided that the property of the so-called M., I. & N. R'y Co. in Missouri was exempt from taxation for a period of twenty years from date of completion, but these respondents are advised and believe that improvident and improper admissouns were made in that case; that points were admitted that ought to have been made, and that the case made by the pleadings in this is different in material
268 matters from the agreed facts decided by the supreme court of Mo.

In answer to the 14th interrogatory, these respondents say that the amount of taxes now claimed to be due to the county of Scotland is twenty-five thousand dollars, more or less.

In answer to the 17th interrogatory, these respondents *and* say that Benjamin F. Bourn, Riley Gale, and E. E. Sparks are judges (not justices) of the county court of Scotland county, Missouri, and further state that, as the county court of said county, they did their best to have assessed and collected State, county, school, and municipal taxes upon all of the property of the M., I. and N. R'y Co. in said county for the year 1879 and for ten years prior thereto, and, if not prevented by higher authority, they intend to cause to be collected, by suits and otherwise, all delinquent taxes upon the property of said railway company.

These respondents, having fully answered all the allegations in complainant's bill of complaint, ask that the case may be dismissed and these respondents allowed their reasonable costs.

WALDO P. JOHNSON,
E. R. McKEE,
Attorneys for Respondents.

STATE OF MISSOURI, }
County of Scotland, } ss:

Benjamin F. Bourn, Riley Gale, E. E. Sparks, and Henry M. Gorin make oath and say that the matters and facts in above answer stated are true, as they are informed and verily believe.

BEN. F. BOURNE.
E. E. SPARKS.
RILEY GALES.
H. M. GORIN.

Subscribed and sworn to before me this 17th day of November, 1879.

269 [SEAL.]

W. W. PURMORT,
Clerk Scotland Co. Court.

And afterwards, to wit, on the seventh day of January, A. D. 1880, there was filed in said cause an amended bill of complaint in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR, JAMES F. SECOR, JOHN E. WALKER, GEORGE S. KNOX, and CHARLES H. MELLEN, Complainants,

vs.

THOMAS HALLADAY, Auditor of the State of Missouri; The County of Schuyler, in the State of Missouri; Bennett Kratzer, James K. Singleton, and A. W. Lind, Justices of the County Court of said Schuyler County, and Frank A. Irvin, Collector of State and County Revenue for said Schuyler County; The County of Scotland, in the State of Missouri; Benjamin F. Bourn, E. E. Sparks, and Riley Gale, Justices of the County Court of said Scotland County; Henry M. Gorin, Collector of State and County Revenue for *the* Scotland County; The County of Clark, in the State of Missouri; Willis M. Boulware, Marcelus L. Chappell, and —— ——, Justices of the County Court of said Clark County, and George S. Stafford, Collector of State and County Revenue of said Clark County, and The Missouri, Iowa and Nebraska Railway Company, Defendants.

Bill in equity.

270 Charles A. Secor and James F. Secor, citizens and residents of the State of New York; John E. Walker and George S. Knox, citizens and residents of the State of Illinois, and Charles H. Mellen, a citizen and resident of the State of Iowa, bring this their amended bill (for the purpose of making additional parties defendants, as prayed in their original bill) against Thomas Hallady, auditor of the State of Missouri; the County of Schuyler, in the State of Missouri; Bennett Kratzer, James K. Singleton, and A. W. Lind, justices of the county court of said Schuyler county; Frank A. Irvin, collector of the revenue in and for said Schuyler county; the County of Scotland, in the State of Missouri; Benjamin F. Bourn, Ephrahim E. Sparks, and Riley Gale, justices of the county court, and Henry M. Gorin, collector of revenues in and for said Scotland county; the County of Clark, in the State of Missouri; Willis M. Boulware, Marcelus L. Chappelle, and James Eagon, justices of the county court, and George S. Stafford, collector of the revenues in and for said Clark county, each of which said counties are organized counties in the State of Missouri and each of the above-named officials are citizens and residents of the State of Missouri, and the Missouri, Iowa and Nebraska Railway Company, a corporation existing in the State of Missouri under the laws thereof.

Your orators ask that all of the persons, officers, and counties and the county courts of said counties, and the said Missouri, Iowa and Nebraska Railway Co., hereinbefore mentioned as defendants, be made parties defendant herein.

And thereupon your orators, humbly complaining, say—

That by an act of the General Assembly of the State of Missouri, approved February 9th, 1857, entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, the said Alexandria

and Bloomfield Railroad Company became and was duly and legally incorporated under the laws of the State of Missouri and authorized and empowered to organize and to do and perform all the acts and things necessary to be done and performed in carrying out
271 the objects of *of* said charter, which objects were to construct, maintain, and operate a line of railway from *from* Alexandria, in Clark county, Missouri, to a point on the northern bound-ry line of the State of Missouri in the direction of the town of Bloomfield, in the State of Iowa, and at such point on said bound-ry line as should be agreed upon between said Alexandria & Bloomfield Railroad Company and a like corporation to be organized under the laws of the State of Iowa for the purpose of connecting therewith.

2. That thereafter, on the 13th day of September, A. D. 1864, the said Alexandria and Bloomfield Railroad Company was organized and commenced the transaction of its corporate business.

3. That by an act of the General Assembly of the State of Missouri, approved Feb'y 19th, 1866, entitled "An act to amend an act entitled An act to incorporate the Alexandria & Bloomfield Railroad Company, approved Feb'y 9th, 1857," the said Alexandria and Bloomfield Railroad Company was authorized to change the name of said company to that of the Alexandria & Nebraska railroad, and that thereafter, in pursuance of the authority conferred by said legislative enactment, the name of said corporation was changed and was thereafter and until the time hereinafter stated known as and was the Alexandria and Nebraska City railroad.

4. That thereafter, under and by authority of the laws of the respective States of Missouri and Iowa, the said Alexandria and Nebraska City railroad was consolidated with the Iowa Southern Railway Company, a corporation in the State of Iowa, and from that time forth the said corporation has been known as and is the Missouri, Iowa and Nebraska Railway Company, the name taken by said consolidated corporation at the date of said consolidation.

That under and by virtue of the respective laws of said States of Missouri & Iowa the said consolidated coporation became and is vested with all the rights, privileges, and immunities of the original constituent corporations in the said respective States of Missouri & Iowa.

272 5. That by the provisions of the 9th section of the charter of said Alexandria & Bloomfield Railroad Company, approved Feb'y 9th, 1857, (which said section is incorporated in and made a part of this bill in the words following, to wit): "Sec. 9. The stock of said company shall be exempt from taxation for the period of twenty years after its completion," the said Alexandria & Bloomfield Railroad Company was, as its successor, the said Missouri, Iowa and Nebraska Railway Company, is, exempt from taxation upon its stock and all property represented by said stock in the State of Missouri for said period of twenty years after its said completion, and complainants avers that said railroad was completed to the Iowa State line on the — day of December, 1872, and not before, and that the same has been from that time until now and still is exempt from taxation within the State of Missouri, and that the said ex-

emption will continue to exist until the — day of December, 1892; that the circuit and supreme court of the State of Missouri have so decided in the case of Scotland County against The Missouri, Iowa and Nebraska Railway Company, reported in the 65 Missouri Rep., at page 123–128.

Your orators further state that the said Missouri, Iowa and Nebraska Railway's railroad is now completed and in operation from the city of Alexandria, in Clark county, Missouri, through the counties of Clark, Scotland, and Schuyler, in the State of Missouri, to the Missouri and Iowa State line, in said Schuyler county, a distance of about seventy miles, and that the said corporation, the Missouri, Iowa and Nebraska Railway Company, does not own or possess in said counties any property, real or personal, other than is used in the operations of said railroad or other than is necessary to said use, and that the entire valuation of the property so owned and used in said counties by said corporation does not exceed in value the sum of one million of dollars, and that not more than that amount of stock has been issued upon that proportionate distance of said railroad.

273 Your orators further state the shares of said stock are of one hundred dollars each and are largely owned by parties not citizens of the State of Missouri; that, in fact, a large majority of said stock is owned by parties who are citizens of States other than the State of Missouri, but that owing to the great number of persons owning said shares your orators are unable to give their names and residences of said respective stockholders.

Your orators state that they are each the owners and holders of large amounts of said stock of the said Missouri, Iowa and Nebraska railway; that the amounts of stock owned and held by them respectively are as follows:

Charles A. Secor and James F. Secor each owns one hundred shares of said stock, of the par value of ten thousand dollars to each of said plaintiffs.

George S. Knox, John E. Walker, and Charles H. Mellen each own forty shares of said stock, of the par value of four thousand dollars to each of said plaintiffs.

Your orators further show that the defendant Thomas Halladay is the State auditor of the State of Missouri, and that as such auditor it — his duty to certify to the county courts of the various counties through which any railroad subject to taxation under the laws of the State may be located the value of such R. R. upon which assessments of taxes in said counties are to be made as the same is certified to him (said auditor) by the State board of equalization; that Bennett Kratzer, James K. Singleton, and A. W. Lind are the county justices of Schuyler county, and Frank A. Irvin is the collector of revenue for said county; that Benjamin F. Bourn, Ephraim E. Sparks, and Riley Gale are the justices of the county court of Scotland county, and Henry M. Gorin is the collector of revenue of said county; that Willis M. Boulware, Marcellus L. Chappelle, and James Eagon are the justices of the county court of Clark county, and that George S. Stafford is the collector

of revenue for said county, and that as such officers it is the
274 duty of the said county court justices, acting as the county courts of their respective counties, to cause to be extended on the tax books of their respective counties all taxes lawfully assessed upon the property in their said counties respectively, and that it is the official duty of the said collectors of revenue in the said several and respective counties to collect the taxes so legally extended upon said tax books in their respective counties when the same, properly extended and certified, is placed in their hands for collection; and as a means of enforcing such collection said collectors are authorized by law to seize and sell the personal property of such persons whose taxes have become delinquent or to employ counsel and cause suits to be brought to enforce such collections against the real estate of such delinquent tax-payers; or the said taxes of railroad corporations delinquent under the law may be collected by civil action in the name of the State in any court of competent jurisdiction in the State whenever the State auditor or county court may adjudge it necessary and so ordered by the county court of the county in which the same are collectable.

But your orator says that by reason of the matters herein stated the said auditor had no authority or warrant in law to certify to the said several county courts of the counties of Schuyler, Scotland, and Clark any taxes against the said Missouri, Iowa and Nebraska Railway Company, nor had the county courts of said counties any warrant or authority in law to assess said taxes against said railway company or its property or to cause the same to be placed and extended upon the tax books of their said several and respective counties, nor have the collectors of said counties any warrant or authority in law to enforce or attempt to enforce the collection of such taxes.

But now so it is, may it please the honorable court, that, as your orators are advised and informed and as they believe and so state the facts to be, the above-named defendants, the said auditor of the State of Missouri and the said several members of the said
275 several and respective county courts and the said several collectors of revenue in and for the said several and respective counties, combining and confederating with divers other persons to your orators at the present unknown, but whose names, when discovered, they pray the liberty of inserting, with apt words to charge them as parties defendant herein, and contriving how to injure your orators and other stockholders in said company, are *going* about to cause the said Missouri, Iowa and Nebraska Railway Company to pay taxes in the said several counties aforesaid, notwithstanding the exemption in their said charter therefrom.

That, so combining and confederating together to oppress, harass, and injure your orators and other of said stockholders, the said State auditor and the said several and respective county courts and the said *and* several and respective collectors of revenue of the said several and respective counties have caused the property of the said railway corporation owned and used exclusively in the operation of said road and necessary for such operation in the said several

and respective counties to be assessed for taxation, and that the same has been so assessed and certified by the said auditor to the said several and respective county courts of the said several and respective counties for taxation for State, county, school, and municipal purposes, and that they, the above-named officials of the State and said counties, pretending that the said railroad company is in default for former years in the payment of taxes, are proceeding to cause said delinquent taxes to be assessed up against and collected from the said railway company, contrary to the provisions of its charter and to the decisions of the courts of Missouri thereon.

That the said county court justices in their said several and respective counties have ordered suit to be brought for said supposed delinquent taxes heretofore assessed upon the property of said railway company, and have contracted and intend to contract with attorneys-at-law to institute and maintain suits for such de-
276 linquent taxes and for such taxes as have heretofore been assessed and are not yet delinquent, but may and will hereafter become delinquent unless said railway company submits to the wrongful oppression or paying the same, and that said defendants have combined and agreed in every way to proceed to enforce the collection of taxes against the property of said railway company as the said defendants would be entitled to do under the laws of Missouri were said taxes legally assessed and said railway company not exempt therefrom by law.

Your orators say that they are owners of a large interest in all the property of said company; that they purchased their interest therein, paying therefor a large and valuable consideration, relying upon the terms of the said charter of the good faith of the State of Missouri in protecting them in their charter rights, privileges, and immunities, and they charge and aver that all of the illegal acts, errors, and irregularities aforesaid committed and intended to be committed by the aforesaid public officers are well known to the officers of the said railway company; that your orators have demanded of said railway company, through its said officers and its board of directors, that they should institute the necessary suits or proceedings, either in law or equity, such as were best calculated to protect the interests of your orators and others, the holders of the stock of said company, but that said company, its officers and directors, neglect and refuse to take any steps to protect the interests of your orators and the other holders of said stock; that while the said officers and company insist that said tax is unjust, oppressive, and illegal they refuse to take the responsibility of contesting the same in the courts of proper jurisdiction, and have declared their intention not to resist the collection of said taxes, although they well know the same to be destructive of the franchises of said company, and that if enforced will wholly destroy and annul the value of the stock so held and owned by your orators.

Wherefore, inasmuch as your orators and those whom they
277 represent are without adequate remedy at law, and for the purpose of preventing a multiplicity of suits and irreparable injury to said company and to your orators, and that exact justice

may be done in the premises, your orators pray your honors to take cognizance of this suit and of the matters of complainant herein stated, and to declare by a decree of this court the action of the board of equalization in assessing the property of the said Missouri, Iowa and Nebraska Railway Company illegal.

To declare the acts of the said auditor and the officers of said counties to be void and of no effect in law or in equity, and that the taxes charged and levied or to be hereafter charged and levied against said company and property on said assessment to be illegal and void, whether for State, county, school, or municipal or any other purpose, and that your honors may grant to your orators a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the defendants hereinafter mentioned, to restrain them and each of them and all others acting for or under them, as well as all persons claiming any right under said assessment, from instituting any suits or in any other manner proceeding to collect said taxes or any part thereof, and restraining said railroad from paying said taxes or any part thereof, and that your honors grant unto your orators a temporary writ of injunction restraining and enjoining the said defendants as above prayed, and that on final hearing the said injunction be made perpetual by the decree of this court, and that they may have such other and further relief as in equity and good conscience they are entitled to.

And, to the end that complete justice may be done, your orators pray that a writ of subpœna may be issued in the manner aforesaid, directed to the defendants herein named, to wit:

Thomas Halladay, State auditor of the State of Missouri; The *the* County of Schuyler, in the State of Missouri; The County Court of said Schuyler County, Bennett Kratzer, James K. Singleton,
278 and A. W. Lind, justices of the county court of said Schuyler county; Frank A. Irvin, collector of revenues in and for said Schuyler county; The County of Scotland, in the State of Missouri; The County Court of said Scotland County, Benjamin F. Bourn, Epharim E. Sparks, and Riley Gale, justices of the county court of said Scotland county; Henry M. Gorin, collector of revenue in and for said Scotland county; Clark County, in the State of Missouri; The County Court of said Clark County, Willis M. Boulware, Marcellus L. Chappelle, and James Eagon, justices of the county court, and George S. Stafford, collector of revenue in and for said Clark county, Missouri, and The Missouri, Iowa and Nebraska Railway Company. Each of the public officers above named as defendants are citizens and residents of the State of Missouri.

And, as in duty bound, your orators will ever pray.

A. J. BAKER AND F. T. HUGHES,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Eastern District of Missouri.

Andrew J. Baker, being duly sworn, says that he — one of the solicitors for complainants in the above amended bill, and that as such he is well acquainted with the facts therein stated; that said

bill is true in so far as the same is stated of his own knowledge, and that of those matters stated on information and belief he has reason to believe them to be true and does so believe them to be true.

ANDREW J. BAKER.

Subscribed & sworn to before me this 7th January, 1880.

A. P. SELBY,
U. S. Com'r, East. Dist. Mo.

And afterwards, to wit, on the first day of April, A. D. 1880, there was filed in said cause a demurrer to the amended bill of
279 complaint in words and figures *and figures* following, to wit:

In the Circuit Court of the United States for the Eastern District of Mo., March Term, A. D. 1880.

CHARLES A. SECOR, JAMES F. SECOR, JOHN E. WALKER, GEORGE S. KNOX, and CHARLES H. MELLEN, Complainants,
vs.
THOMAS HALLADY, Auditor of the State of Missouri, *et al.*, Defendants.

Now, at this day, comes The Counties of Schuyler, in the State of Mo.; Bennett Kratzer, James K. Singleton, and A. W. Lind, judges of the county court of Schuyler, and Frank A. Irvin, collector of the State and county revenues of said county; The County of Clark, in the State of Mo.; Willis M. Boulware, Marcellus L. Cahppell, judges of the county court of Clark county, and George S. Stafford, collector of the State and county revenues of said Clark county, and demur to the amended bill of complaint filed by complainants in this cause, and for cause of demurrer say—

That the facts set forth in this bill of complaint do not show or constitute any cause of action or complaint against these defendants and do not entitle the complainants to the relief prayed for in said bill of complaint.

Wherefore these defendants pray the judgment of the court whether they shall be required to make further answer to said bill of complaint.

E. R. MCKEE AND W. P. JOHNSTON,
Att'ys for Defendants.

And afterwards, to wit, on the sixth day of December, A. D. 1881, the following, among other, proceedings were had and appear of record in said cause, to wit:

280 CHARLES A. SECOR *et al.*, Complainants,
vs.
J. K. SINGLETON *et al.*, Defendants. } 1505.

The demurred of certain defendants to complainants' amended bill having heretofore been submitted on complainants' motion, and having been fully considered by the court, and the court being

now fully advised in the premises, it is ordered that said demurrer be, and it is hereby, overruled at demurrants' cost.

And thereupon plaintiffs, by their solicitors, filed replication to the answer of Thomas Holliday. Complainants, by their solicitors, also suggest the death of George Knox, one of the complainants herein, and the appointment of William Hill as administrator to the estate of the said Knox; and thereupon, on motion of said solicitors, the said William Hill, administrator aforesaid, is made a co-complainant herein.

And thereupon, on motion of complainants' solicitors, now filed, said bill is dismissed as to defendant Holladay; and it now appearing to the court that the defendants The County of Scotland, The County Court of Scotland County, B. F. Bourn, Riley Gale, and E. E. Sparks, judges of said county court, and H. M. Gorin, collector of said Scotland county, have filed no plea or answer to complainants' amended bill herein, it is now, on motion of complainants' solicitors, ordered and decreed that said amended bill be, and it is hereby, taken *pro confesso* as to said defendants; and thereupon leave is granted to demurrants herein to January rules, 1882, to answer.

Said answer of Thomas Holliday, above referred to, was filed on the twenty-fourth day of April, 1880, and is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

281 CHARLES A. SECOR *et al.*, Complainants,
vs.
THOMAS HOLLIDAY, Auditor of the State of Missouri, *et al.*, Defendants.

Now, at this day, by his attorneys, comes Thomas Holliday, auditor of the State of Missouri, and for separate answer to the amended bill of complaint filed by complainants, and says that he denies each and every allegation in the complaint, and, having fully answered, prays the same may be dismissed as to him with costs.

E. P. McKEE AND
W. P. JOHNSTON,
Att'y. for said Def't.

The replication to the answer of Thomas Holliday, filed as aforesaid on the sixth day of December, A. D. 1881, is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES F. SECOR *et al.*
vs.
JAMES K. SINGLETON *et al.*

The replication of Charles F. Secor, James A. Secor, John E. Walker, William Hill, as adm'r of the estate of George Knox, now deceased, and Charles H. Mellen, complainants, to the answer of Thomas Holliday, one of the defendants.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will ever, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants.

Without this, that any other matter or thing whatsoever
282 in said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things *this* repliant *is* and will be ready to aver and maintain and prove as this honorable court shall direct, and humbly pray*s* as in and by *its* said bill *it* has already prayed.

A. J. BAKER,
Solicitor for Complainants.

And afterwards, to wit, on the seventh day of December, A. D. 1881, there was filed in said cause an answer of certain respondents in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR, JAMES F. SECOR, and Others, Complainants,
vs.
THOMAS HOLLIDAY, Auditor of Mo.; THE COUNTY OF SCHUYLER, and Others, Defendants.
} Bill in Equity.

All the respondents (except the Missouri, Iowa and Nebraska Railway Company and Thomas Holliday), by their attorneys, come, and for their joint and separate answer to the amended bill of complaint filed in this cause answer and say—

That they deny each and every allegation in said amended bill of complaint not hereinafter admitted.

1st. These respondents admit that an act entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company" was passed by the General Assembly of the State of Missouri and ap-

proved Feb. 9, 1857; but they deny that by said act the said Alexandria and Bloomfield Railroad Company became and was duly and legally incorporated under the laws of the State of Mis-
283 souri; on the contrary, th*ese* respondents allege and charge the truth to be that under the provisions of said act of the General Assembly James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, De Kalb Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and Reynolds Bane, of the county of Clark, and all such persons as may hereafter become stockholders in said company, were incorporated under the law and authorized to organize as an incorporated company; but these respondents are informed and believe and so charge the fact to be that said James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, De Kalb Musgrove, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and Reynolds Bane never did organize a corporation known as "The Alexandria and Bloomfiled Railroad Company" under said act of the General Assembly of the State of Missouri, nor did they, with others, assist in any such organization; and these respondents deny that any organization was made of such company, and require full proof of all the allegations in said amended bill of complaint in relation thereto.

2. Th*ese* respondents say it is not true and deny that on the 13th day of September, 1864, or at any other time, a company known as the Alexandria and Bloomfield Railroad Company was organized under the provisions of the act of the General Assembly aforesaid, or that any such company commenced the transaction of any corporate business.

3. These respondents admit that the printed acts of the General Assembly of the State of Missouri for a session thereof beg*a*n and held on the 1st day of November, 1865, contain an act which appears as approved on the 19th day of February, 1866, entitled "An act to amend an act entitled 'An act to incorporate the Alexandria and Bloomfield Railroad Company,'" approved Feb. 9, 1857, with additional title by which the Alexandria and Bloomfield Railroad Company was authorized to change its corporate name to that of the Alexandria and Nebraska City railroad; but these respondents are advised and believe and so aver the fact to be that said
284 act which appears as approved 19th Feb., 1866, never was passed by the two houses of the General Assembly of the State of Missouri in the manner provided and required by the constitution of said State of Missouri then in force and which took effect on the 4th day of July, 1865, and for that reason said act was and is void and of no force, and these defendants deny the passage of any such law.

These respondents, further answering, say that as to whether, in pursuance of said supposed authority claimed to be conferred by the act of the 19th of Feb., 1866, aforesaid, the name of the so-called and so-claimed Alexandria and Bloomfield Railroad Company was thereafter changed, designated, and known as the Alexandria and

Nebraska City railroad, these respondents have no sufficient knowledge or information to form a belief, and deny the same.

4. That as to the allegation that thereafter, under or by authority of the laws of the respective States of Missouri and Iowa, the said Alexandria and Nebraska City railroad was consolidated with the Iowa Southern Railway Company, a corporation in the State of Iowa, or whether from that time forth the said corporation has been known as or is the Missouri, Iowa and Nebraska Railway Company, or whether any consolidated corporation took said name at the date of any supposed consolidation, these respondents have no knowledge or information to form a belief; but these respondents deny that, under and by virtue of any laws of Missouri and Iowa or under the laws of either of them, the said so-called consolidated corporation became or is vested with any rights, privileges, or immunities of the original constituent corporations in said States of Missouri and Iowa; but these respondents state that if any such consolidations were had and said companies were merged or attempted to be merged into one the Missouri, Iowa and Nebraska Railway Company so formed became a new company, existing under and by virtue of the general law of the State of Missouri, and is not entitled to the immunity of exemption from taxation upon its stock given
285 by the charter granted authorizing the organization of the Alexandria and Bloomfield Railroad Company (which company was never organized); but the company formed by such so-called consolidation was strictly a new company and subject to all the laws in force in this State at the time of its formation, and is subject to taxation.

5. These respondents admit that by the provisions of the 9th section of the charter of the Alexandria and Bloomfield Railroad Company, approved Feb. 9th, 1857, that the stock of said company was exempted from taxation for the period of twenty years after its completion; but these respondents allege and charge the fact that no company was ever organized or had legal existence under said charter, and that, while it may be admitted there has been a so-called railroad company in this State called by that name and known by that name, it never was organized under that charter, and said so-called company is not entitled to any rights, privileges, or immunities which would have accrued to a company organized in accordance with and under provisions of said act of the General Assembly approved on the 9th day of Feb., 1857.

These respondents allege and charge that even if the so-called Alexandria and Bloomfield Railroad Company had been duly organized under the act of the General Assembly aforesaid, approved 9th Feb., *9th* 1857, and that by virtue of said act its stock was exempt from taxation, and that the Mo., Iowa and Nebraska Railway Co. was its legal successor and as such entitled to all its rights and immunities under said act, but that even then the roadbed and rolling stock, depots, round-houses, and all other property, real and personal, belon-ing to said railway company would have been and is subject to taxation, as by virtue of the constitution of Missouri the General Assembly is authorized and required to levy

taxes upon all property in the State subject to taxation in proportion to its value, and by virtue of the 5th section of article 10 of the constitution of Missouri "all railroads in the State or
286 doing business therein shall be subject to taxation for county, State, school, municipal, and other purposes on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises, and their capital stock, and, as it is the property of this so-called corporation that a tax is levied on, it is not only right, just, fair, and equitable, but it is in exact accord with not only the spirit of the constitution, but in harmony with the very letter of the fundamental law of the land.

These respondents admit that the said railway has not been completed twenty years, but deny that that provision has any bearing upon the case under consideration.

These respondents further *and* allege and charge that by the provisions of the charter or act of the General Assembly approved 9th Feb., 1857, under which complainants claim the Mo., Iowa & Neb. Railway Co. are now acting, no authority was given or pretended to be given to construct a railroad in Scotland or Schuyler county; but had a company been organized under said charter it would have *been* no authority outside of the county of Clark, in the State of Mo., and that under no circumstances can these complainants set up any claim to exemption from taxation in said counties of Scotland and Schuyler, defendants herein.

These respondents, further answering, say that in relation to the cause of Scotland County against The Missouri, Iowa and Nebraska Railroad Company, referred to in the bill of complaint and reported in vol. 65 Mo. Reports, pages 123 to 128, inclusive, that such case can have no bearing on the trial of this cause and cannot be referred to as authority in this case for the reason that both the circuit court and the supreme court passed upon an agreed statement of facts made up by parties in that particular case and embracing a statement of facts wholly different in many respects from the issues to be tried in this case, matters and things being admitted in that case, and which has by the courts to be taken as true, which in truth
287 were not true, and which, upon the trial of this case, will appear ought not to have been conceded by the plaintiff in said cause; and, further, that all said admissions and concessions were good in that case only, and which said admissions and concessions these respondents utterly ignore in this case and claim a fair trial upon all the issues made by the pleadings in this case.

W. P. JOHNSTON &
HENRY A. CUNNINGHAM,

Solicitors for Respondents Benj. F. Bourn, E. E. Sparks, and Riley Gale, Justices of the County Court of Scotland County, and for Scotland County, in the State of Missouri, and for Henry M. Gorin, Collector of State and County Revenue for said Scotland County, and

W. P. JOHNSTON,

Solicitor for All the Respondents Named in Answer to Amended Complaint.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered that on the seventh day of December, A. D. 1881, the following, among other, proceedings were had and appear of record in the circuit court of the United States for the eastern district, to wit:

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

On motion of certain respondents herein, by H. A. Cunningham, Esquire, their solicitor, it is ordered that the decree, *pro confesso*, entered herein on December 6, 1881, be, and the same
288 is hereby, set aside; and thereupon, by leave of the court, the answer of all the respondents herein, except defendants Holliday and The Missouri, Iowa and Nebraska Railway Company, to complainants' amended bill, is now filed.

And afterwards, to wit, on the thirteenth day of December, A. D. 1881, the following further proceedings were had and appear of record in said cause, to wit:

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

On motion of complainants, by their solicitors, this day made at chambers, leave is herewith granted said complainants to file an amendment to their bill, at their own costs, on or before January 3, 1882; and thereupon said complainants, by their solicitors, file said amendment to bill, with leave to defendants to plead thereto on or before February rules, 1882.

Said amendment to bill is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et als.*
vs.
JAMES K. SINGLETON *et als.*

Charles A. Secor, James F. Secor, John E. Walker, Charles H. Mellen, and William Hill, administrator of the estate of George Knox, defendants, plaintiffs in the above-entitled cause, by leave of the court present this their amendment to their bill in equity against
The County Court of Schuyler County, in the State of Mis-
289 souri; Bennett Kratzer, James K. Singleton, and A. W. Lind, judges of the county court of said Schuyler county; Frank

A. Irvin, collector of State and county revenue for said Schuyler county; The County of Scotland, in the State of Missouri; Benjamin F. Bourn, Epharim E. Sparks, and Riley Gale, judges of said county court of Scotland county, Missouri; Henry M. Gorin, collector of State and county revenue for said Scotland county; The County of Clark, in the State of Missouri; Willis M. Boulware, Marcellus L. Chappelle, and James Eagon, judges of the county court of said Clark county, and George S. Stafford, collector of State and county revenue for said Clark county, and The Missouri, Iowa and Nebraska Railway Co., defendants.

And, humbly complaining, your orators show—

1st. That the said defendants, combining to cheat, injure, and defraud your petitioners, do at times pretend that the said act of Feb'y 9th, 1857, intitled An act to incorporate the Alexandria and Bloomfield Railroad Co. was not in fact a charter of incorporation incorporating said railroad company, but that it was an act authorizing the persons therein named and all such persons as, thereafter might become stockholders to organize a corporation, and falsely pretending and claiming that the persons so named in said act did not organize a corporation known as the Alexandria and Bloomfield Railroad Company nor assist in such organization, and that by reason thereof your orators are not entitled to the relief demanded in their original and amended bills of equity in this cause.

Wherefore your orators, herein re-lying to said false and fraudulent pretenses, show unto this honorable court that all such pretenses are false and inequitable;

For your orators show that by said act of the General Assembly the said persons therein named were "created a body corporate and politic in fact and in name by the name and style of the Alexandria and Bloomfield Railroad Company:" and your orators aver, as heretofore averred, that on the 13th day of September, 1864, the said corporation was organized for the transaction of its
290 proper corporate business.

2nd. They, the said defendants, at other times pretend that a majority of the persons named in said act of incorporation never accepted said charter and organized for the transaction of business under its provisions, and that therefore and by reason thereof your orators are not entitled to the relief demanded.

Wherefore your orators, replying unto such false and fraudulent pretenses, show unto this honorable court that all such pretenses are false and unequitable, and that the defendants are estopped from having and maintaining any such defense to your orators' claim for relief. In support whereof your orators show unto the honorable court the following:

That the legal existence of said corporation has been acknowledged and acquiesced in for a long series of years by all of said parties defendant and by the various departments, legislative and judicial, of the State of Missouri and of the United States, in this:

1st. The said county of Clark, in its corporate capasity, under the provisions of said charter, by its county court, did, in the year 1864 and after September 13th of said year, subscribe to and take stock

in said Alexandria and Bloomfield Railroad Company, and did, on the 1st day of January, 1865, issue its bonds in payment of said stock so subscribed, and said subscription of stock was held and adjudged to be legal and valid by the circuit court of Missouri for Lewis county and by the supreme court of the State of Missouri in the case of Smith and Hall *vs.* Clark County, reported in the 54 Mo. Reports, at page- 58 to 82, whereby the said county of Clark and the said courts of the State of Missouri recognized the organization and legal existence of said corporation.

And your orator- charges that said county of Clark accepted, owned, and held the stock so subscribed for and received the benefits and emoluments accruing therefrom.

2nd. The said county of Scotland, in its corporate capacity,
291 under the provisions of said charter, by its county court, did, on the 1st day of Sept., 1870, subscribe to and take stock in the said Missouri, Iowa and Nebraska Railway Company's corporation, created by the consolidation of the Alexandria and Nebraska City railroad with the Iowa Southern Railway Co., as fully set out in the plaintiffs' former amended bill, and issued its bonds in payment thereof, and that said subscription was held valid and binding by this honorable court and by the Supreme Court of the United States in the case of The County of Scotland *vs.* Thomas, reported in 94 U. S. Supreme Court Reports, at page 682; and the said county of Scotland accepted and held the stock so subscribed for and received the benefits and emoluments accruing therefrom.

3d. The said county of Schuyler in like manner subscribed to the stock of the said Missouri, Iowa and Nebraska Railway Company, and issued its bonds in payment therefor on the 1st day of September, A. D. 1871, which said subscription was held to be legal and binding upon said county by this honorable court and by the Supreme Court of the United States in the case of Schuyler County *vs.* Thomas, reported in 98th Supreme Court Reports, page 169; and the said Schuyler county accepted and held the stock so subscribed and received the benefits and emoluments accruing therefrom.

And your orators say that in the case referred to in the amended bill, to wit, the case of Scotland County *vs.* The Missouri, Iowa and Nebraska Railway Company, 65 Mo., page 123, the circuit and supreme court- of the State of Missouri recognizes and establishes the validity of the organization and existence of the said Alexandria and Bloomfield Railroad Company as a corporation existing under said charter, and that said fact is admitted solemnly by the said defendant, Scotland County.

4. Your orators further show that by the act of Feb'y 19th, 1866, referred to in the amended bill, the legislative department of the State of Missouri recognized and acquiesced in the legal organization and existence of the Alexandria and Bloomfield Railroad
292 Company under the charter of Feb'y 9th, 1857.

Wherefore plaintiffs aver that if there were any irregularities in the primary organization of said corporation that its existence has been leg-lized and established by sufferance and by the

repeated recognitions of such existence by the departments of the State, legislative and judicial, and by the judicial decisions by the courts of the United States, and by the acts of recognition upon the part of the defendants in this cause, and that therefore the said defendants are barred and estopped in equity from setting up, having, or maintaining any such excuses or pretenses as a defense to the relief prayed in plaintiffs' bill.

Wherefore your orators ask that the relief heretofore prayed for may be granted unto them, and for all further and proper relief, such as in equity and good conscience they may be entitled to.

A. J. BAKER,
Solicitor for Pl'ffs.

F. T. HUGHES, *Counsel.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

Andrew J. Baker, being duly sworn, says that he is the solicitor for plaintiffs in this cause, and as such is well acquainted with the facts therein stated; that the same are true in so far as the same *is* stated of his own knowledge, and that those matters stated on information and belief he believes to be true.

ANDREW J. BAKER.

Subscribed and sworn to before me this 30th day of December, 1881.

A. P. SELBY,
U. S. Commissioner.

And afterwards, to wit, on the twenty-fourth day of January, A. D. 1882, the following further proceedings were had and ap-
293 pear of record in said cause, to wit:

CHARLES F. SECOR *et al.*, Complainants,
vs. } 1505.
J. K. SINGLETON *et al.*, Defendants.

Now come the defendants, by their solicitors, and file their motion to strike from the files complainants' amendment to the bill herein. Said motion is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Respondents.

All of the respondents (except Thomas Holliday and the Missouri, Iowa and Nebraska Railway Company), by their solicitors, come and move the court to strike out a paper filed in this cause on the 30th day of December, 1881, and called an amendment to the original bill first filed by complainants, for the following reasons, to wit:

1. Because it purports to be filed as an amendment to the original bill and not as a complete pleading in itself, superseding the original bill of complaint.
2. Because, although called an amendment to the original bill of complaint, an attempt is made to reply to matters set up in the answer filed by these respondents.
3. Because it failes in form and substance to conform to any pleading known to the law.
4. Because it contains irrelevant matter.
5. Because it is vague and uncertain.

WALDO P. JOHNSTON,
H. A. CUNNINGHAM,
Solicitors for Respondents.

294 And afterwards, to wit, on the thirteenth day of March, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

CHARLES A. SECOR *et al.*, Plaintiffs,
vs. } 1505.
J. K. SINGLETON *et al.*, Defendants.

Now come the parties, by their solicitors, and submit to the court the motion of defendants to strike from the files plaintiffs' amendment to the bill herein; and the court, having fully considered the same, orders that said motion be, and it is, overrruled.

And thereupon leave is given defendants to May rules to plead to the said bill as amended.

And afterwards, to wit, on the tenth day of May, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

CHARLES A. SECOR, JAMES F. SECOR, JOHN E. WALKER, William Hill, Administrator of the Estate of George Knox, Deceased, and Charles H. Mellon, Plaintiffs,
against
JAMES K. SINGLETON, BENNETT KRATZER, S. B. LIND, Judges of the County Court of Schuyler County, Missouri; The County of Schuyler, The County Court of Schuyler County, The Collector of Revenue for Schuyler County; Benjamin F. Bourn, Riley Gale, and Ephraim E. Sparks, Judges of the County Court of Scotland County, Missouri; The County of Scotland, The County Court of Scotland County, Missouri; Willis M. Boulware, Marcellus L. Chappell, and John Stafford, Judges of the County Court of Clark County, Missouri; The County of Clark, The County Court of Clark County, Missouri; The Collector of Revenue for Clark County, Missouri, and The Missouri, Iowa and Nebraska Railway Company, Defendants. } 1505.

295 Now, at this day, this cause coming up to be heard upon the plaintiffs' motion for a decree *pro confesso* and final decree,

and it appearing to the court that the above-named defendants have *filed* to plead or answer the plaintiffs' amended bill in equity and are in default, it is ordered and adjudged by the court that the said defendants and each of them are in default, and it is decreed that said bill in equity be taken as true *pro confesso*.

Whereupon said cause coming on for final hearing and the court, being fully advised in the premises, doth find that the allegations of said bill in equity are true, and that the plaintiff- *is* entitled to the relief therein prayed.

Wherefore it is ordered and adjudged by the court that the plaintiffs recover from the defendants, except the Missouri, Iowa and Nebraska Railway Company, the sum of one dollar as damages and the costs, to be taxed, in this cause, and that they have execution therefor.

It is further ordered and decreed that the said defendants, the said several counties of Clark, Scotland, Schuyler, in the State of Missouri; the said several courts of said counties, respectively, and the said several named judges of said several and respective county courts, and the said several and respective collectors of said several and respective counties, by themselves, their officers or agents, or their said several and respective successors in office, be, and they are hereby, perpetually enjoined and restrained from levying or attempting to levy, collecting or in any manner attempting to collect from or of the said Missouri, Iowa and Nebraska Railway Company any taxes whatever, State, county, school, or municipal, of whatever kind or character, until the expiration of the exemption limited in the charter of said railway company, to wit, December 1st, 1892, and that the said Missouri, Iowa and Nebraska Railway Company, by its officers, agents, or employees, be and are also perpetually enjoined from paying any such tax as have or that may be
296 levied for years prior to the said first of December, 1892, and that a writ of perpetual injunction issue in accordance with this decree.

(Certificate of the clerk to the foregoing record omitted by consent of the solicitors for the respective parties herein.)

M.

(*Copy of Assessment of* 1887 *Against the Keokuk & Western R. R. Co.*)

AUDITOR'S OFFICE, STATE OF MISSOURI, CITY OF JEFFERSON, *Aug.* 18*th*, 1887.

To the county clerk of clark county:

I, John Walker, State auditor of the State of Missouri, do hereby certify that the valuation of the Keokuk & Western Railroad Company in the county of Clark and in the municipal townships, cities, and towns of said county, as adjusted, equalized, and assessed by the State board of assessment and equalization of railroad property for the year 1887, is correctly set forth in the following table:

County of—	Road-bed, including side tracks — no. of miles.	Value per mile of road-bed and superstructure.	Value per mile of rolling stock and other property named in section 6866 R. S.	Value of buildings.	Total valuation in county.	State tax. Revenue.	State tax. Interest.	Total taxes.
Clark	2,900	$4,000 00	$800 00	$2,000 00	$141,200 00	$282 40	$282 40	$564 80
Townships.					**Total valuation in townships.**			
Vernon	2.50	"	"	200 00	12,200 00			
Clay	4.50	"	"	200 00	21,800 00			
Des Moines	3.00	"	"	200 00	14,600 00			
Madison	6.50	"	"	400 00	31,600 00			
Lincoln	6.50	"	"	100 00	32,200 00			
Wyaconda	6.00	"	"		28,800 00			
Cities and towns.					**Total valuation in cities and towns.**			
Cahoka	.75	"	"	1,000 00	4,600 00			

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my official seal. Done at office, in the city of Jefferson, this 18th day of Aug. A. D. 1887.

JOHN WALKER, *State Auditor.*

298 Afterwards, to wit, on Tuesday, the 28th day of January, 1890, and during the regular December term, 1889, of said court, the following, among other, proceedings were had and appear of record, to wit:

THE KEOKUK AND WESTERN RAILROAD COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; ROBERT M. THOMPSON, JOSEPH E. BILLUPS, W. W. BUFORD, and JOEL EWING; The County Court of Clark County, Missouri; J. E. TODD, MIKE SEYB, GEORGE HARTER, and J. H. MILLION; The County Court of Schuyler County, Missouri; WILLIAM LOGAN, N. SLOOP, T. G. NELEY, N. T. ROBERTS, Defendants. } 19.

This case heretofore come on to be heard upon a rule to show cause why a temporary injunction should not issue as prayed in the bill of complaint, and was argued and submitted by counsel for the respective parties upon the bill, answer, and affidavits filed by the respective parties, and in the course of such hearing it was orrally stipulated in the presence of the court by counsel for the respective parties that the court upon the decision of the rule to show cause might grant such final rilief (either dismissing the bill or sustaining the same and granting the relief demanded therein) as it deemed proper on the case made. Wherefore the court, having since duly considered the pleadings and proofs and arguments of counsel heretofore made and being now duly advised in the premises, doth determine that there is no equity in the complainant's bill; and it is thereupon considered, adjudged, and decreed that said bill of com-
*com*plaint be, and the same is hereby, dismissed, and that the de-
298*a* fendants recover of the complainant their several costs herein expended, as the same may be taxed by the clerk, and that execution issue therefor in conformity with law.

And thereupon, on the same day and at the same term of court, the complainant prays the court to allow an appeal from said decree and decision to the Supreme Court of the United States, and such prayer is hereby granted and an appeal allowed upon complainants giving bond in the penal sum of five hundred (500) dollars, to be approved by the court or one of the judges thereof.

On the same day and at the time of the making and entering of said decree the court delivered and filed in said cause the following:

Opinion.

In the Circuit Court of the United States for the Northern Division of the Eastern Judicial District of Missouri.

Filed Janu'y 28th, '90.

THE KEOKUK AND WESTERN R. R. CO.
vs.
THE COUNTY COURT OF SCOTLAND COUNTY *et als.*

F. T. Hughes, solicitor for complainant; John C. Moore, T. S. Montgomery, and Anderson & Schofield, solicitors for defendants.

THAYER, *District Judge:*

This is a proceeding begun on February 13th, 1888, against the county courts of Scotland, Clark, and Schuyler counties, Missouri, and against the several persons who at that time were judges of said courts, and also against the several collectors of
298*b* revenue for said counties, to restrain them from collecting or attempting to enforce the collection of certain taxes assessed against a certain railroad extending through the counties aforesaid, which at the date of the filing of the bill belonged to and was being operated by complainant, The Keokuk & Western R. R. Company.

The property in question formerly belonged to the Missouri, Iowa and Nebraska Railway Company. Complainant acquired title thereto and possession on December 3rd, 1886, by virtue of foreclosure proceedings under a mortgage executed by the Missouri, Iowa & Nebraska R'y Co. The taxes in dispute had been assessed during the ownership of the mortgagor company, and complainant's contention is, in brief, that the property in question was exempt from taxation while owned by the mortgagor company. That it was exempt from assessment after the purchase by the Keokuk & Western R. R. Co. is not claimed. Six months before the present bill was filed suit was instituted against the complainant in the State circuit court under the revenue laws of the State to recover a portion of the same taxes that form the subject of contention in this proceeding. That suit has recently been decided by the supreme court of the State, and it was held in an elaborate opinion that that portion of complainant's railroad situated in the counties of Clark, Scotland, and Schuyler, in this State, was not exempt from taxation while owned by the Missouri, Iowa & Nebraska Railway Company.

State *ex rel.* Wine *vs.* Keokuk & Western R. R. Co., — S. W. Rep. —.

The facts on which the claim of exemption from taxation is predicated are fully stated in the opinion last referred to. It will suffice to say that the exemption claimed was contained in a special charter granted to the Alexandria & Bloomfield R. R. Co. on the 9th day of February, 1857 (Session Laws of Mo. 1857, page 94); that the last-named company by legislative permission first changed its
299 name to the Alexandria & Nebraska R. R. Co., and thereafter, on May 3rd, 1879, became consolidated with the Iowa Southern R'y Co., a corporation of Iowa, under the name of the Missouri, Iowa & Nebraska R'y Co., and that the consolidation proceedings were had under the provisions of a law enacted in the State of Missouri on March 2nd, 1869 (Session Laws of Missouri 1869, page 75). The supreme court of the State decides in effect that the consolidation proceedings operated as a surrender of the immunities and franchises of the Alexandria & Bloomfield R. R. Co., to which the exemption was originally granted, and to dissolve that corporation; that by virtue of the consolidation proceedings a new corporation was created, which derived all of its powers and franchises in Missouri from the consolidation act of 1869, and that inasmuch as that act was passed after the adoption of the constitution of 1865,

which prohibited legislative grants of exemption from taxation (sec. 16, art. 10), no immunity from taxation was or could be acquired by the Missouri, Iowa & Nebraska R'y Co. by virtue of the consolidation act in question.

The decision is therefore conclusive of the present controversy if it is followed.

I have assumed, in accordance with what seems to be the doctrine established by the case of Louisville & Nashville R. R. Co. *vs.* Palmes, 109 U. S., page 256, as well as by the case of Burgess *vs.* Seligman, 107 U. S., 33, that the court is entitled to express an independent judgment upon the questions involved, giving to the decision of the State court, as a matter of course, the weight and respectful consideration as an authority upon the points involved that the decisions of such courts are always entitled to.

There seems to be no adequate ground for dissenting from the conclusion reached by the State supreme court in the case above referred to, that the result of the consolidation proceedings which took place on May 3rd, 1870, was to create a new corporation under the name of the Missouri, Iowa & Nebraska R'y Co., that derived its powers and franchises from the consolidation act of March 2d, 1869 (*supra*). The general disposition of both the Federal and State courts seems to be to regard consolidation proceedings taken under such laws as that which prevails in Missouri as operating to create a new corporation wholly distinct from the constituent corporations out of which it is formed and with powers and franchises derived from the act under which the proceeding is taken and from such other general laws prescribing the powers of corporations as at the time prevail in the State.

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In addition to the authorities cited on this point in State *ex rel.* Wine *vs.* Keokuk & Western R. R. Co. (*supra*) the following cases may be consulted with advantage:

St. Louis, I. M. & S. R'y Co. *vs.* Berry, 113 U. S., 465, and—
Memphis R. R. *vs.* Commissioners, 112 U. S., 609.

Conceding that the Missouri, Iowa & Nebraska R'y Co. was a new corporation formed on May 3rd, 1870, and that the proceeding of that date was not a mere alliance between two old corporations or a merger of the powers of the Iowa corporation with the Missouri corporation under the charter of the latter, the conclusion also seems inevitable, considering the Federal decisions on the subject, that the new consolidated company did not acquire the immunity from taxation originally granted in 1857 to the Alexandria & Bloomfield R. R. Co. The law is well settled since the decision in Morgan *vs.* Louisiana, 93 U. S., 217, that exemptions from taxation must be construed as a personal privilege granted to the very corporation named in the grant and to have perished with it, unless the express and clear intention of the law requires that it should pass to an assignee or successor, and all the grants of that charter are to be construed *strictissimi juris*.

Memphis R. R. *vs.* Commissioners (*supra*).

In the case of The St. Louis, Iron Mountain & Southern R'y Co.

vs. Berry, 113 U. S., 465, it appeared that a railroad corporation of the State of Arkansas had been created in 1853 with an ex-
301 emption from taxation and also with a power under its charter to consolidate with other foreign railroad corporations under such an agreement as it deemed advisable.

It executed the charter power of consolidation on May 4th, 1874, by consolidating with a Missouri corporation. The agreement of consolidation provided that "all the rights, privileges, and franchises of each of the corporations" should pass to the consolidated company. In the meantime, however (in 1868), the constitution of the State of Arkansas had been amended so as in effect to prohibit exemptions from taxation and to subject all property to like burdens.

It was held by the court that inasmuch as a new corporation had been created by the amalgamation of the two corporations that the consolidated company was subject to all laws relating to taxation in existence when the consolidation took place, and hence was not entitled to any immunity from taxation with respect to the property acquired from the original Arkansas corporation.

Concerning the nature of the contract between the State and the original company, granting to the latter the right to consolidate and immunity from taxation, the court said: "For what was the contract? Construed in the most liberal spirit in favor of the company, it cannot be extended beyond a stipulation on the part of the State that the Cairo & Fulton Railroad Company may at any time thereafter by consolidation with any other *rail* railroad company form and become a new corporation with such powers and privileges as at the time when the offer is accepted and acted upon it may be within the power of the State to confer and lawful for the new corporation to accept. If acted upon before the law was changed, it might well be that all powers and privileges originally conferred in the charter of the Cairo & Fulton Railroad Company, including the exemption in question, would have vested in the new company; but, as it was not accepted and acted upon until a change in the original law of the State forbade the creation of corporations capable of holding property exempt from taxation, it
302 must be presumed that when the original company entered into the consolidation it did so in full view of the existing law and with the intention of forming a new corporation, such as the constitution and laws of the State at that time permitted. That, at least, we must hold to be the legal effect of the transaction."

In the case at bar it will be noted that the Alexandria & Bloomfield R. R. Co. was not accorded the right to consolidate by the charter of 1857. That right was granted on March 2nd, 1869, after the change in the Missouri constitution prohibiting corporate exemptions from taxation. With much greater force *than* may it be said that the right to consolidate held out by the Missouri act of 1869 was a right to consolidate subject to then existing laws as to taxation.

If it be urged in opposition to this reasoning that the offer held out by the act of 1869 was an offer to consolidate and at the same

time to retain the exemption theretofore enjoyed, the answer thereto is twofold.

In the first place, the act of 1869 contains no apt language to include the exemption in question. Exemptions from taxation are properly classed as immunities, rather than as privileges or franchises, and the act of '69 merely promised that the new company formed should "be entitled to the same privileges and franchises" as the Alexandria & Bloomfield R. R. Co.

(*Vide* sec. 4, act of March 2, 1869.)

This point was expressly ruled in the case of the Ches-peak- and Ohio R'y Co. *vs.* Miller, 114 U. S., 176, where the words "shall succeed to all such franchises, rights, and privileges as would have been had," &c., were held not to include and pass an immunity from taxation.

But a better answer to the objection last supposed is that the General Assembly of the State of Missouri, after the adoption of the constitution of 1865, had no power to promise to a new corporation to be thereafter formed that it would renew in its favor
303 an exemption theretofore enjoyed by one of the constituent corporations that was to become dissolved by the act creating the new entity; and this point has also been expressly ruled in the case of The Louisville and Nashville R. R. Co. *vs.* Palmes, 109 U. S., 244.

Speaking of a similar prohibition to that found in the Missouri constitution of 1865, in a case that arose in the State of Florida, where an attempt had been made by the legislature of that State to renew or extend to a subsequent corporation an exemption from taxation possessed by a former corporation, whose property it had acquired, the court say:

"The *inhabitation* of the constitution applies in all its force against the renewal of an exemption equally as against its original creation. * * * After the adoption of the constitution of Florida of 1868 there could be no corporation created capable in law of accepting and enjoying such an exemption, for that was prohibited by the constitutional provisions that have been cited."

Pages 254 & 255.

Strictly in line with the decision in St. Louis, Iron Mountain & Southern R'y Co. *vs.* Berry (*supra*) is the previous decision in Memphis R. R. Co. *vs.* Commissioners, 112 U. S., 609, heretofore cited.

In the latter cause a corporation was created in 1853 by the State of Arkansas with an exemption from taxation and with authority to mortgage its charter. The charter having been mortgaged and sold under a decree of foreclosure, the purchasers organized as a corporation under the same, claiming all of the franchises and immunities specified therein, including the exemption from taxation.

The court held, among other things, that, even if the sale under the mortgage conveyed to the purchasers the right to organize as a corporation or to become a corporation, it is merely a right to organize under such laws as might be in force when the organiza-

tion took place; that such an organization would be a cor-
304 porate entity distinct from that which originally organized and executed the mortgage, and a company so formed by purchasers would be subject to taxation according to the laws in force when such organization took place, and that the immunities from taxation granted in the charter of 1853 would be limited to the corporate body that first organized thereunder.

It seems unnecessary to pursue the subject further. If the question whether the Missouri, Iowa & Nebraska Railway Company acquired an immunity from taxation is still an open question and is to be determined in the light of Federal adjudications, I feel confident that the exemption cannot be sustained.

It is insisted, however, that the exemption was heretofore upheld by the supreme court of this State in the case of Scotland County *vs.* The Missouri, Iowa & Nebraska Railway Company, 65 Mo., 123; that a similar ruling was afterwards made by this court in Secor *vs.* Singleton *et als.*, 9 Fed. Rep., 809, and that the question has been settled in this State by these decisions and is not open to further controversy.

It is not asserted, however (as I understand), that the judgment referred to in the State court or the decree in the Federal court operates as an estoppel in this proceeding, so as to preclude the defendants from denying that the Missouri, Iowa & Nebraska Railway Co. was entitled to an immunity from taxation. The filing of the present bill by the complainant would seem to be an admission by it that the decree of this court in the Secor case is not available for its protection; but the contention is that the judgment and decree in the two cases established a rule of property, on the faith of which complainant has acted, and hence the rule cannot be disturbed, even though it is erroneous, according to the principals announced in Gelpecke *vs.* Dubuque, 1 Wall., 206, and Burgess *vs.* Seligman, 107 U. S., 20, and cases cited.

It is questionable whether the doctrine invoked can prop-
305 erly be applied to a cause like the one at bar under any circumstances. To say that — a State court has once decided that a certain corporation is entitled to exemption from taxation the decision must thereafter be followed, although erroneous, would involve consequenses of such a serious nature that any court ought to hesitate to give its assent to such a doctrine.

The exemption claimed and upheld might be a perpetual one, affecting property of the value of millions of dollars. The bare statement of the proposition that the sovereign power of taxation might be irrevocably lost in such a case by an erroneous decision on a point not well argued or carefully considered would seem to be its own refutation.

In the present case it is, however, clear that the decisions relied upon did not establish a settled rule of property within the meaning of the doctrine invoked. In the case of Scotland County *vs.* The Missouri, Iowa & Nebraska R'y Co. (*supra*) the supreme court of the State evidently did not consider the question whether any exemption from taxation passed to the consolidated company, because it

was not a controverted question in that court. The fact that the exemption was acquired by the consolidated company seems to have been taken for granted, for the reason that counsel in the case so assumed, or at least raised no issue on that point.

The case of Secor *vs.* Singleton *et als.*, subsequently tried in this court, passed off on demurrer, the ruling on the demurrer having been followed by a decree *pro confesso* taken against the defendants. It is obvious that no questions were considered in the Secor case except such as had been previously considered by the supreme court of the State. The only allusion to the question of exemption is found in the following paragraph of Judge Treat's opinion. Referring to the demurrer, he said. "It was interposed obviously for
mere delay, inasmuch as the only legal question involved
306 has been decided, as set out in the bill (65 Mo., 123), adversely,
which decision this court recognizes as conclusive on a question of State taxation."

9 Fed. Rep., 810.

Under the circumstances it cannot be admitted that the decisions in question established a settled rule of property to which this court, any more than the State court, is bound to adhere. In the case of The Louisville & Nashville R. R. *vs.* Palmes, 109 U. S., 256 & 257, the Supreme Court of the United States refused to recognize a previous decision of the supreme court of Florida, which had incidentally upheld a corporate exemption from taxation, as establishing a rule of property such as the Federal courts are bound to uphold, and what was there said, considering the circumstances under which the decision of the Florida court had been rendered, is strictly applicable to the cause at bar.

The court accordingly concludes that the rule to show cause why an injunction should not issue (which was heretofore entered in this suit) ought to be discharged and an injunction refused. It is so ordered.

It will be understood, of course, that the court intends to express no opinion as to the effect of the decree in the Secor case, which has now become final, further than as heretofore stated, that it cannot be regarded as working an estop-el in this proceeding.

Whatever rights were secured by that decree must, of course, be enforced as between parties now entitled to the protection of the decree.

307 Afterwards, to wit, in vacation, on the 8th day of March, 1890, the following appears of record:

KEOKUK AND WESTERN RAILROAD COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MO., *et al.*, Defendants. } 19.

At this day comes the complainant, by its solicitor, and files bond in appeal in this cause in the sum of five hundred (500) dollars, with

J. H. Million and H. M. Hiller as securities, duly approved by A. M. Thayer, dist. judge.

Which said bond is in words and figures as follows, together with the endorsements thereon:

In the Supreme Court of the United States.

NORTHERN DIVISION,
Eastern District of the State of Missouri.

KEOKUK & WESTERN RAILROAD COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, and Others, Defendants. } In Chancery.

Know all men by these presents that we, The Keokuk & Western Railroad Company and J. H. Million and H. M. Hiler, of Clark county, Missouri, are held and firmly bound unto The County Court of Scotland County, Missouri, and unto E. Billups, W. W. Buford, and Joel Ewing, as judges of said court, and Robert M. Thompson, as sheriff of said county, and also unto The County Court of Clark County, Missouri, and J. E. Todd, Charles Seyb, and George Harter, as judges of said court, their successors, executors, or administrators, in the penal sum of five hundred dollars; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 13th day of February, 1890.

Whereas the above day the Keokuk & Western Railroad Company hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled
308 cause by the circuit court of the United States for the northern division of the eastern district of Missouri: Now, therefore, the condition of this obligation is such that if the above-named Keokuk & Western Railroad Company shall prosecute its said appeal with effect and answer for all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

KEOKUK & WESTERN RAILROAD COMPANY,
By F. T. HUGHES, *President.* [SEAL.]
J. H. MILLION. [SEAL.]
H. M. HILLER. [SEAL.]

STATE OF IOWA,
County of Lee, } *ss:*

We, J. H. Million and H. M. Hiller, the above-named persons who signed the foregoing bond as parties thereto, each for himself states on his oath that he is worth the sum of $1,000 over and above all exemptions and liabilities.

J. H. MILLION.
H. M. HILLER.

Subscribed and sworn to before me, the undersigned, a notary public within and for the county of Lee and State of Iowa.

My commission expires 4 July, 1890.

[L. S.] EDMUND JAEGER,
Notary Public.

Approved this 7th day of March, 1890, and ordered to be filed.
AMOS M. THAYER,
Dist. Judge.

(Endorsed:) No. 19. Keokuk & Western Railroad Co. *vs.* Scotland County *et al.* Bond in appeal to U. S. Supreme C't. Filed March 8th, 1890. Geo. C. Moore, clerk.

309 Afterwards, to wit, in vacation, on the 14th day of March, 1890, the following appears of record:

KEOKUK AND WESTERN RAILROAD COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MO., *et al.*, Defendants. } 19.

At this day comes the complainant, by its solicitor, and files bond in appeal in the sum of five hundred ($500) dollars, with J. H. Million and H. M. Hiller as securities, duly approved by the Hon. A. M. Thayer, dist. judge.

Which said bond is in words and figures as follows, together with the endorsements thereon:

In the Supreme Court of the United States.

NORTHERN DIVISION,
Eastern District of the State of Missouri.

KEOKUK & WESTERN RAILWAY COMPANY, Complainant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MO., *et al.*, Defendants. } In Chancery.

Know all men by these presents that we, The Keokuk & Western Railroad Company and J. H. Million and H. M. Hiller, of Clark county, Missouri, are held and firmly bound unto The County Court of Scotland County, Missouri, and unto Robert M. Thompson, Joseph E. Billups, and W. W. Buford, as judges of said county court, and Joel Ewing, as collector of revenue of said county; The County Court of said Schuyler County, William Logan, T. G. Neeley, and N. Sloop, judges of said county court, Schuyler county, and N. T. Roberts, collector of revenue thereof, and also unto The County Court of Clark County, Missouri, and J. E. Todd, Charles Seyb, and George Harter, as judges of said court, and J. H. Million, as collector of revenue thereof, their successors, executors, or ad-
310 ministrators, in the penal sum of five hundred dollars; to the payment of which, well and truly to be made, we bind our-

selves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 10th day of March, 1890.

Whereas the above The Keokuk & Western Railroad Company hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the northern division of the eastern district of Missouri: Now, therefore, the condition of this obligation is such that if the above-named Keokuk & Western Railroad Company shall prosecute its said appeal with effect and answer for all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

KEOKUK & WESTERN RAILROAD COMPANY. [SEAL.]
F. T. HUGHES, *President.* [SEAL.]
J. H. MILLION. [SEAL.]
H. M. HILLER. [SEAL.]

STATE OF MISSOURI, } ss:
County of Clark, }

We, J. H. Million and H. M. Hiller, the above-named persons who signed the foregoing bond as parties thereto, each for himself states on his oath that he is worth the sum of $1,000 over and above all exemptions and liabilities.

J. H. MILLION.
H. M. HILER.

Subscribed and sworn to before me, the undersigned, a notary public within and for the county of Clark and State of Missouri.

My commission expires March 13th, 1893.

[L. S.] J. A. WHITESIDE,
Notary Public.

Approved:
A. M. THAYER, *Dist. Judge.*

311 (Endorsed:) No. 19. In U. S. circuit court, N. div., E. dist. of Mo. Keokuk & West'n Railroad Co. *vs.* County Court of Scotland County *et al.* Bond in appeal to U. S. Supreme Court. Filed Mar. 14, 1890. Geo. C. Moore, clerk.

Endorsed on cover: Case No. 14,152. E. Missouri C. C. U. S. No. 780. The Keokuk and Western Railroad Company, appellant, *vs.* The County Court of Scotland County, Missouri, *et al.* Filed September 17, 1890.